

UNITED STATES  
CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD. 3  
(IN THREE VOLUMES.)

FORBES P. HASKELL, as Receiver of SCANDINAVIAN-AMERICAN BUILDING COMPANY, a Corporation, et al,

Appellants,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al,

Appellees.

TACOMA MILLWORK SUPPLY COMPANY, a Partnership Consisting of ANN DAVIS and R. T. DAVIS, Jr., as Executors of the Estate of R. T. DAVIS, Deceased, R. T. DAVIS, Jr., LLOYD DAVIS, HARRY L. DAVIS, GEORGE L. DAVIS, MAUDE A. DAVIS, MARIE A. DAVIS, RUTH G. DAVIS, HATTIE DAVIS TENNANT and ANN DAVIS,

Appellants,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al,

Appellees.

McCLINTIC-MARSHALL COMPANY, a Corporation, and E. E. DAVIS & COMPANY, a Corporation, and FAR WEST CLAY COMPANY, a Corporation,

Appellants,

vs.

ANN DAVIS and R. T. DAVIS, Jr., as Executors of the Estate of R. T. DAVIS, Deceased, et al,

Appellees.

WASHINGTON BRICK, LIME & SEWER PIPE COMPANY, a Corporation,

Appellant,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al,

Appellees.

BEN OLSON COMPANY, a Corporation,

Appellant,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al,

Appellees.

J. P. DUKE, as Supervisor of Banks of the State of Washington, and as Successor in Office of the Defendant CLAUDE P. HAY, as State Bank Commissioner of the State of Washington, FORBES P. HASKELL, Jr., as Special Deputy Supervisor of Banks of the State of Washington, and SCANDINAVIAN-AMERICAN BANK OF TACOMA, a Corporation,

Appellants,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al,

Appellees.

VOLUME II.

(Pages 417 to 864, Inclusive.)

Upon Appeals from the United States District Court for the Western District of Washington, Southern Division.

FILED

JAN 30 1923



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L. DAVIS, GEORGE L. DAVIS, MAUDE A. DAVIS, MARIE A.  
DAVIS, RUTH G. DAVIS, HATTIE DAVIS TENNANT and ANN  
DAVIS,

Appellants,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al.,

Appellees.

McCLINTIC-MARSHALL COMPANY, a Corporation, and E. E. DAVIS &  
COMPANY, a Corporation, and FAR WEST CLAY COMPANY, a  
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Appellants,

vs.

ANN DAVIS and R. T. DAVIS, Jr., as Executors of the Estate of R. T.  
DAVIS, Deceased, et al.,

Appellees.

WASHINGTON BRICK, LIME & SEWER PIPE COMPANY, a Corporation,  
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vs.

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J. P. DUKE, as Supervisor of Banks of the State of Washington, and as  
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Bank Commissioner of the State of Washington, FORBES P. HAS-  
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Washington, and SCANDINAVIAN-AMERICAN BANK OF TACOMA,  
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XXXIV.

Defendant further alleges that during the year 1920 the Scandinavian-American Bank of Tacoma formed the plan of erecting a building on lots 11 and 12 in block 1003, referring to the first cross-complaint, and also on lot 10 adjoining the same; but the building planned by it was so costly and expensive that the said Bank could not erect the same without investing in it a sum in excess of thirty per cent of its capital, surplus and undivided profits, which would be in violation of the statutes of the State of Washington, unless the consent of the Bank Examiner thereto was obtained; that the consent of the Bank Examiner thereto could not be obtained; that thereupon the said Bank determined to do indirectly what it was prohibited by the said statutes from doing directly, and formed the scheme to erect the said building through the agency of a corporation formed and owned by it and its officers; that in pursuance of the said scheme the Scandinavian-American Building Company, referred to in said cross-complaint, was formed and incorporated at the instigation and request of the said Bank and in its sole interest, by certain of its officers and stockholders who had no substantial financial interest therein but who merely organized the said company and subscribed to the capital stock thereof as [300] agents and dummies of the said Bank, which, after the said organization, took, received and held the capital stock therein as its own; that in pursuance of the said scheme the said Bank paid for Lot 10, adjoining the said Lots

11 and 12, and thereupon caused it to be conveyed to the said Building Company, and thereafter through the agency of the said Building Company it began the construction of the building on said lots referred to in said cross-complaint and advanced to said building company a large sum of money which was expended in the construction of said building. That the said Bank used a large part of its funds in carrying out the said scheme and in partially erecting the said building, and thereupon it became impracticable to obtain sufficient money to erect the said building and pay for the labor and materials used in the construction thereof, and the entire scheme thereupon collapsed, both the said Bank and the said Building Company became and were found to be insolvent and a receiver was appointed in this case for the said Building Company, and cross-complainant John P. Duke, Supervisor of Banking of the State of Washington, took charge of the said bank as an insolvent bank and is now closing up its business and affairs in accordance with the laws of the State of Washington.

#### XXXV.

Defendant alleges that the said Building Company was merely the agent and creature of the said Bank and that the erection of the said building was the act of the said Bank operating through its agency in the sole interest of the said Bank; that while title to said lots was nominally vested in said Building Company yet in reality they remained the property of the said Bank and were so at the time of the assignment of the mortgage referred

to in said cross-complaint to the said Scandinavian-American Bank of Tacoma.

XXXVI.

Defendant further alleges that at the request of the Scandinavian-American Building Company, and while it was the holder of the legal title to said lots, it furnished to said Building Company builders' materials for use in the construction of the said building hereinbefore referred to, and that within ninety days from the furnishing thereof it filed a notice in writing in the office of the auditor of Pierce County, Washington, duly verified as required by law, claiming a lien on the said building and on the said lots for the amount due on the said builders' materials, and that it thereby acquired a valid lien on the said building and on the said lots for the price and value of the said builders' materials, to wit: The sum of \$22,165.34; that in its counterclaim in this action served on cross-complainants, it seeks a foreclosure of the said lien against all the parties to this action.

XXXVII.

Defendant further alleges that at the time it commenced to furnish the builders' materials hereinbefore referred to, the mortgage set forth in the third cross-complaint had not attached and no money or other consideration had been paid, advanced or contracted for thereunder and that at the time of the alleged transfer and assignment of the said note and mortgage to the Scandinavian-American Bank of Tacoma by the said G. Wallace Simpson, this defendant had already commenced to

furnish builders' materials hereinbefore referred to, as was then well known to the said Scandinavian-American Bank of Tacoma, and its right to a lien therefor had already attached under the laws of the State of Washington. [301]

WHEREFORE defendant prays that the said cross-complaints, and each of them, be dismissed, and that the lien of this defendant be adjudged and decreed to be prior to all claims and demands of the cross-complainants and each of them in and to, on or against the said real estate hereinbefore referred to, and may defendant have a decree foreclosing its said lien as prayed for in its counterclaim heretofore filed in this action; and may this defendant have a judgment against the said cross-complainant for its costs and disbursements in its behalf incurred.

R. S. HOLT,

Attorney for Far West Clay Company.

1115 Fidelity Bldg.,  
Tacoma, Washington.

(Exhibits and verification not attached to this copy.)

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 5, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [302]

**Stipulation Adopting Answer of Far West Clay Company as Answer of Certain Other Parties.**

WHEREAS it is deemed essential and advantageous by all parties in the above-entitled case to avoid repetition in pleadings and to get the case at issue with the least possible delay and

WHEREAS the defenses of many of the lien claimants to the cross-complaint of the Scandinavian-American Bank and John P. Duke will be the same; and

WHEREAS certain of the other lien claimants wish to adopt and make use of the answer of the Far West Clay Company, now on file;

NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the undersigned attorneys for the said Scandinavian-American Bank and John P. Duke, and the undersigned attorneys, who represent other defendants in this case, that the answer of the Far West Clay Company, to the cross-complaints of the Scandinavian-American Building Company and John P. Duke, be and the same is hereby adopted by and shall be taken to be and considered as the answer of each and every one of the defendants signing this stipulation.

IT IS FURTHER STIPULATED that this stipulation shall be taken and considered as the separate answer of each one of the said defendants as though said answer was set forth in full by each defendant and filed as a separate pleading; and it is further stipulated that this stipulation shall be



deemed and considered as having set out in proper and sufficient form the same defenses to the said cross-complaints of the Scandinavian-American Bank and John P. Duke, as are set forth in the said answer of the Far West Clay Company; and that the said stipulation shall be taken as having set forth in the respective answer of each defendant signing, his or its claim of lien as set forth in his or its respective cross-complaint now on file in this cause.

Tacoma, July 18/'21.

STILES & LATCHAM and  
J. F. FITCH,

Attys. for Ben Olson Co.

STILES & LATCHAM,

Attys. for F. H. Godfrey.

D. R. HOPPE,

Attorney for Theodore Hedlund.

HARTMAN & HARTMAN,

Attorneys for W. E. Morris.

BURKEY, O'BRIEN & BURKEY,

Attorneys for City Lumber Agency.

R. S. HOLT,

Attorney for Far West Clay Co.

WALTER S. FULTON,

Attorney for Crane Company.

BATES & PETERSON,

Attorneys for Puget Sound Iron & Steel Works.

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Attorneys for McClintie-Marshall Co.

---

Attorneys for Scandinavian-American Bank, F. P.

Haskell, J. P. Duke, Scandinavian-American Building Co., Claud P. Hay.

---

Attorneys for Tacoma Millwork Supply Co.

---

Attorneys for E. E. Davis & Co.

---

Attorneys for U. S. Machine & Engineering Company, Inc.

---

Attorneys for Carl J. Gerring and George Gerring.

DE WITT M. EVANS,

Attorney for F. R. Schoen.

S. F. McANALLY,

Attorney for C. H. Boedecker and Wm. L. Owen.

CHARLES BEDFORD,

Attorney for N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafsen, E. Scheibel, Paul Scheibel, F. J. Kazda, W. Donellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, P. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, O. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Petterly and Thomas S. Short and George W. Hicks.

BOGLE, MERRITT & BOGLE,

Attorneys for Otis Elevator Company.

W. W. KEYES,

Attorney for Hunt Mottet Co. and Henry Mohr  
Hardware Co.

FITCH & ARNTSON,

Attorneys for Savage-Scofield Co.

H. A. P. MYERS,

Attorney for H. C. Greene as H. C. Greene Iron  
Works.

TEATS, TEATS & TEATS,

Attorneys for J. D. Mullins.

L. R. BONNEVILLE,

DAVIS & NEAL,

Attorneys for Robert M. Davis and Frank C.  
Neal. [303]

H. S. GRIGGS and

L. R. BONNEVILLE,

Attorneys for St. Paul & Tacoma Lumber Co.

WALTER M. HARVEY,

Attorney for Edward Miller Cornice & Roofing Co.,  
Without Prejudice to the Right to Urge and  
Rely on the Allegations *Allegations* and *f* Aver-  
ments of Our Answer and Cross-complaint on  
File Herein.

CHAS. P. LUND,

DAVIS & NEAL,

Attorneys for Washington Brick, Lime & Sewer  
Co.

B. S. GROSSCUP and

W. C. MORROW,

CHAS. A. WALLACE,

Attorneys for Colby Star Mfg. Co. and P. & G.  
Lumber Co.



LYLE, HENDERSON & CARNAHAN,  
Attorneys for Tacoma Shipbuilding Co.

J. M. LOCKERBY,

Attorney for J. A. Soderberg.

LUND & LUND,

Attorney for Gustaf Johnson.

BAUSMAN, OLDHAM, BULLITT &  
EGGERMAN,

Attorneys for Sherman Wells, Frederick Webber.

LOUIS J. MUSCEK,

Attorney for M. Kleiner, Doing Business as Liberty  
Lumber & Fuel Co.

The Scandinavian-American Bank of Tacoma, F. P. Haskell, J. P. Duke and Scandinavian Building Co. and Claud P. Hay, each hereby waive the right to raise any objection to the above procedure and agree to said stipulation with the qualification that the defenses set forth in said answer of the Far West Clay Co. and referred to in the said stipulation are not admitted or agreed to be sufficient in law or equity.

GUY E. KELLY,

THOS. MacMAHON,

F. D. OAKLEY,

Attorneys for Above-named Defendants. [304]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 13, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [305]

**Order Approving and Ratifying Stipulation Re Answer of Far West Clay Company.**

It appearing that certain written stipulations have been entered into by the parties herein, relating to the pleadings and issues in this cause, by the terms of one of which stipulations it was provided among other things that the stipulation shall be treated as a denial by each of the parties thereto of each and every one of the material allegations alleged by each of the other parties in his answer and cross-complaint or counterclaim, and that the stipulation shall be treated as a pleading by each of the parties thereto and other matters set forth fully in said stipulation; and the other of said stipulations providing that the answer of the Far West Clay Company to the cross-complaints of the Scandinavian-American Building Company and John P. Duke, be taken to be and considered as the answer of each and every one of the defendants signing the stipulation, and providing further that the stipulation shall be taken and considered as the separate answer of each one of the said defendants, as though said answer were set forth in full by each defendant and filed as a separate pleading, and other matters set forth fully in said stipulation; [306]

NOW, THEREFORE, IT IS HEREBY ORDERED, that said stipulations are in all things approved and ratified and shall be deemed to be a part of the pleadings upon which this case is to be tried.

IT IS FURTHER ORDERED that this order shall be entered as of the 19th day of October, 1921.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Nov. 10, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [307]

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**Stipulation Avoiding Cross-Complaints as Between Defendants.**

WHEREAS, each of the parties whose names are hereunto signed have filed answers and cross-complaints, or answers and counterclaims in the above-entitled action, in which each of them has set up and asserted a lien for labor or builders' materials, or for labor and materials as a contractor or subcontractor, furnished for or used, or manufactured for or used in the steel office building which has been partly constructed by the Scandinavian-American Building Company as the reputed owner thereof, on lots 10, 11 and 12 in block 1003 in that part of the City of Tacoma known as "New Tacoma," said property being more particularly described in the amended and supplemental complaint and other pleadings in this action; and

WHEREAS, each of the parties hereto disputes in whole or in part the right of each of the other parties to a lien on the said building and the said premises, and each one disputes the priority of the

lien of the other, over his, and some of them claim a priority over the liens of the others if the same are established; and

WHEREAS, it is considered desirable, in order to prevent the accumulation and the filing of so many pleadings by the respective parties, that the process of raising an issue as to the lien, the validity thereof, and the priority of the lien, of each of said parties by each of the others, may be accomplished in some short method without each of the parties being compelled to file a separate pleading to the answer and counterclaim of each of the others; and

WHEREAS, it is thought that this purpose may be subserved by a stipulation for that purpose between all the parties hereto, now, therefore, in order to accomplish the said purpose,

IT IS HEREBY STIPULATED AND AGREED

I.

That this stipulation shall be treated as a denial by each of the parties hereto of each and every one of the material allegations set forth and alleged by each of the other parties hereto in his answer and cross-complaint or counterclaim, setting up his said lien or claim. [308]

II.

That this stipulation shall be treated as a pleading by each of the parties hereto in answer or reply to the answer and cross-complaint or answer and counterclaim of each of the other parties hereto, denying the right of each and every one of the said other parties to a lien, and denying the priority of the lien of each and every one of them, and asserting

the priority of the lien of such party hereto over each, any, or all of the liens of the other parties hereto.

### III.

That this stipulation shall be treated as a pleading in behalf of each of the parties hereto, to the answer and cross-complaint or the answer and counterclaim of each of the other parties, raising each and every defense against the lien of each of the said other parties, as the validity or the priority thereof, and which the said parties may desire to assert or raise against the same; and to make this part of the stipulation more definite, IT IS EXPRESSLY UNDERSTOOD, that under this stipulation, treated as a pleading as aforesaid, each of the parties may introduce against each or all of the other parties hereto, any relevant or material evidence in support of an affirmative defense which shows that for any reason any one or more of the other parties hereto has no lien or has waived his lien or that his lien is subject or subordinate to the lien of the party asserting the said defense, or any other defense of an affirmative nature or character tending to defeat the lien of the other party or parties, and to establish the lien of the party asserting the defense, or its priority over any of the other liens so questioned or attacked.

It is, however, understood, with respect to any affirmative defenses embraced within this stipulation, that when the evidence is taken in support of any one of the liens to which any objection is made or with respect to which there is in any respect a contest, any of the parties hereto who may desire

to interpose some special affirmative defense which is not raised or suggested by the written pleadings in the case, he shall in a general way at some time during the progress of the taking of the evidence, inform the party who is seeking to establish his lien, of the nature and character of the defense or defenses, or objections, to the said lien or claim and as to any priority which he may intend to make or support by evidence. Any such defense or objection so stated shall inure to the benefit of all the parties hereto without a separate statement or objection by each one.

#### IV.

It is not intended hereby that the question of order or *quantum* of proof necessary to be made in support of any of the liens, shall be affected or controlled by this stipulation, but each party shall proceed to prove his lien in the usual and customary manner.

SCANDINAVIAN-AMERICAN  
BUILDING CO.,  
CLAUD P. HAY,  
FLICK & PAUL,  
Attorneys for Tacoma Millwork Supply Co.  
STILES & LATCHAM,  
Attorneys for F. H. Godfrey.  
STILES & LATCHAM and  
J. F. FITCH,  
Attorneys for Ben Olson.



B. S. GROSSCUP and  
W. C. MORROW,  
CHAS. A. WALLACE,

Attorneys for Colby Star Mfg. and P. & G. Lumber  
Co.

LYLE, HENDERSON & CARNAHAN,  
Attorneys for Tacoma Shipbuilding Co.

J. M. SOCKERBY,

Attorney for J. A. Soderberg.

LUND & LUND,

Attorneys for Gustaf Johnson.

BAUSMAN, OLDHAM, BULLITT &  
EGGERMAN,

Attorneys for Sherman Wells, Frederick Webber.

---

Attorney for Carl J. Gerring and George Gerring.

DE WITT M. EVANS,

Attorney for F. R. Schoen.

S. F. McANALLY,

Attorney for C. H. Bodecker and William L.  
Owens.

CHARLES BEDFORD,

Attorney for N. A. Hansen, A. J. Van Buskirk,  
C. W. Crouse, F. L. Swain, D. A. Trolson, Fred  
Gustafsen, E. Scheibel, Paul Scheibel, F. J.  
Kazda, W. Donnellan, P. Hagstrom, Arthur  
Purvis, Roy Farnsworth, C. B. Dustin, L. J.  
Pettifer, Charles Bond, L. H. Broten, W. Can-  
aday, L. R. Lilly, F. McNair, Dave Shields,  
Ed Lindberg, Joe Tikalsky, P. Mente, C. Gus-  
tafson, George Larson, F. Marcellino, M. Swan-  
son, William Griswold, O. E. Olson, C. I. Hill,

Emil Johnson, C. Peterson, Earl Whitford,  
F. A. Petterly and Thomas S. Short and George  
W. Hicks.

LOUIS J. MUSCEK,

Attorney for M. Kleiner, Doing Business as Liberty  
Lumber Fuel Co.

BOGLE, MERRITT & BOGLE,

Attorneys for Otis Elevator Company.

W. W. KEYES,

Attorney for Hunt Mottet Company and Henry  
Mohr Hardware Company.

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Attorneys for McClintic-Marshall Co.

---

Attorneys for Scandinavian-American Bank, F. P.  
Haskell, J. P. Duke. [309]

FITCH & ARNTSON,

Attorneys for Savage-Scofield Co.

H. A. P. MYERS,

Attorney for H. C. Greene as H. C. Greene Iron  
Works.

D. R. HOPPE,

Attorney for Theodore Hedlund.

HARTMAN & HARTMAN,

Attorneys for W. E. Morris.

JAMES W. REYNOLDS,

PETERS & POWELL,

Attorneys for E. E. Davis.

BURKEY, O'BRIEN & BURKEY,

Attorneys for City Lumber Agency.

E. N. EISENHOWER,

Attorney for Carl Gebbers, Fred S. Haines, Ajax  
Electric Co.



TEATS, TEATS & TEATS,

Attorneys for J. D. Mullins.

R. S. HOLT,

Attorney for Far West Clay Co.

L. R. BONNEVILLE,

DAVIS & NEAL,

Attorneys for Robert M. Davis and Frank C.  
Neal.

WALTER S. FULTON,

Attorney for Crane Company.

BATES & PETERSON,

Attorneys for Puget Sound Iron & Steel Works.

H. S. GRIGGS and

L. R. BONNEVILLE,

Attorneys for St. Paul & Tacoma Lumber Co.

WALTER M. HARVEY,

Attorney for Edward Miller Cornice & Roofing  
Co.

CHAS. P. LUND,

DAVIS & NEAL,

Attorneys for Washington Brick, Lime & Sewer  
Co.

A. O. BURMEISTER,

Attorney for U. S. Machine & Engineering Com-  
pany, Inc. [310]

The Scandinavian-American Bank of Tacoma, F.  
P. Haskell, Jr., J. P. Duke, and Scandinavian  
Building Co. and Claud P. Hay, each hereby waive

the right to raise any objection to the above procedure.

GUY E. KELLY,  
THOS. MacMAHON,  
F. D. OAKLEY,

Attorneys for Above-named Defendants.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 13, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [311]

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**Stipulation Between Attorneys for McClintic-Marshall Co., E. E. Davis & Co., Far West Clay Co., and Tacoma Millwork Supply Co. for Use on Appeal of Briefs Filed in This Case.**

The undersigned attorneys respectively for McClintic-Marshall Company, E. E. Davis & Co., Far West Clay Company and R. T. Davis et al., doing business under the firm name and style of Tacoma Millwork Supply Company, do hereby stipulate that the memorandum briefs of the attorneys for the complainant and the cross-complainant Tacoma Millwork Supply Company, submitted to his Honor Judge Edward E. Cushman, and each and every part thereof, may be used by way of excerpts therefrom in the briefs on appeal, and that this stipulation may be and shall be incorporated in the praecipe to evidence this agreement.

Further, that neither the briefs nor the excerpts therefrom need be forwarded to the Circuit Court

of Appeals in any part of the record, nor need the same, or any part thereof, be printed in the record, but that that portion of the respective briefs on appeal shall be interchanged in typewritten form between the attorneys for litigants herein mentioned prior to printing the same so that the excerpts may be carefully checked with the original briefs used in argument before his Honor Judge Cushman.

Dated this 8th day of November, 1922.

HAYDEN, LANGHORNE & METZGER,  
Attorneys for McClintic-Marshall Co. [312]

PETERS & POWELL,  
Attorneys for E. E. Davis & Co.

EDWIN H. FLICK,  
Attorneys for Tacoma Millwork Supply Co.  
ALFRED J. SCHWEFFE,

Of Counsel.

R. S. HOLT,  
Attorney for Far West Clay Co.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Nov. 9, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [313]

**Memorandum Decision.**

Filed March 31, 1922.

HAYDEN, LANGHORNE & METZGER, for Complainant,

KELLY & McMAHON, F. D. OAKLEY, Esq., for Defendant Bank and Building Company.

CHAS. BEDFORD, Esq., DAVIS & DEAL, L. R. BONNEVILLE, Esq., for Labor Claimants.

DeWITT EVANS, Esq., for F. R. Shoen.

BATES & PETERSON, for Puget Sound Iron & Steel Works,

STILES & LATCHAM, for F. H. Godfrey and Ben Olson Company.

F. S. McANALLY, Esq., for W. L. Owens and C. H. Boedecker.

BURKEY, O'BRIEN & BURKEY, for City Lumber Agency.

HERBERT S. GRIGGS, Esq., L. R. BONNEVILLE, Esq., for St. Paul & Tacoma Lbr. Co.

W. W. KEYES, Esq., for Hunt & Mottet and Henry Mohr Hdwe. Company.

FITCH & ARNTSON, for Savage-Scofield Co.  
[314]

R. S. HOLT, Esq., for Far West Clay Co.

GROSSCUP & MORROW, CHAS. WALLACE, Esq., for P. & G. Lumber Co., Colby Star Mfg. Co.

WALTER S. FULTON, Esq., for Crane & Co.

CHARLES P. LUND, Esq., DAVIS & NEAL, for Washington Brick, Lime & Sewer Pipe Co.

E. N. EISENHOWER, Esq., for Ajax Electric Co.

TEATS, TEATS & TEATS, for Mullins Bros.

H. A. P. MEYERS, for H. C. Green Iron Works.

JAMES W. REYNOLDS, for E. E. Davis Co.

BOGLE, MERRITT & BOGLE, for Otis Elevator Co.

WALTER M. HARVEY, Esq., for Edward Miller Cornice & Roofing Co.

FLICK & PAUL, for Tacoma Millwork Supply Company.

CUSHMAN, D. J.—The present suit involves a number of asserted liens for labor and material furnished in and for the construction of a building upon that property commonly known as the “Scandinavian-American Building Company property,” and the marshalling of such liens as are established.

Upon many of the issues raised, there appear a number of reasons supporting the Court’s findings, which have been urged by counsel, but, on account of the desirability of an early decision upon the questions involved, the Court has, in most instances, done no more than state some one reason which appears sufficient to justify and require that finding.

Further delay is not only prejudicial to the parties to this suit and creditors of the bank, but the Court’s recollection of the testimony cannot but wane with the passing of time and the public, as well as the parties, is interested in a speedy determination.

Many points have been argued and considered in this case that are pertinent and the discussion of

which here would [315] be appropriate, and, no doubt, more satisfactory to counsel who have so earnestly urged them, but the discussion of which would, necessarily, postpone the determination of this cause. It is, therefore, deemed sufficient to state that the points made would in many instances support the conclusions reached, and in no way defeat or adversely control any of them.

There are a number of general questions affecting more than one of the liens, which can be considered in the abstract. Among these is the question of a right to lien for material, materials fabricated, and materials and fixtures specially prepared for the building, but not delivered on the premises to be improved. These questions affect the claims of the Tacoma Millwork Supply Company, Washington Brick, Lime & Sewer Pipe Company, Ben Olson Company, Crane & Company, and Edward Miller Cornice & Roofing Company.

The Washington statute involved provides:

“Every person performing labor upon or furnishing material to be used in the construction \* \* \* of any \* \* \* building \* \* \* has a lien upon the same for the labor performed or material furnished by each, \* \* \* .” (Sec. 1129 Rem. & Bal. Code.)

While this statute has been before the Supreme Court of the State of Washington in many cases, the later expressions of that Court to the point in question appear in *Western Hdwe. & Metal Co. vs. Maryland Casualty Co.* (105 Wash., 54) and *Holly-*



Mason Hdwe. Co. vs. National Surety Company, et al. (107 Wash., 74).

While it may be true that, in a controversy solely between the materialman, or contractor or subcontractor, and the owner, the owner will be estopped to deny the lien because of a failure to deliver the material, where any act of his, or act with which he may be charged, has in any way caused such failure, yet, when the substantial controversy is, as it is here, between the lien claimants, no such rule should be applied. While the contractor or subcontractor may, where material has been delivered to him for work upon it by him, be considered, in some respects, [316] as the agent of the owner (*Western Hdwe. & Metal Co. v. Maryland Cas. Co.*, 105 Wash. 54), the owner is not the lien claimant's agent; nor will the lien claimant, himself, be considered the agent of the owner in respect to his own lien claims, where he claims to have retained the material in his shop or factory for the purpose of completing necessary work upon it, or because the owner was not prepared to receive it at the building being constructed.

The Court holds that there is no lien right on the part of any claimant here for any material or fixture not delivered on the premises where the building was in course of construction, nor for any labor performed upon any such material or fixture.

While a contractor, or subcontractor may have been held to be the agent of the owner when a materialman delivered material to the contractor or subcontractor for work to be done upon it away

from the premises—the owner and his bondsman being thereby estopped to deny the lien because of a want of delivery (*Western Hdwe. & Metal Co. vs. Maryland Cas. Co., supra*)—yet there is no reason that will extend that rule to make one lien claimant, contractor or subcontractor the agent of another who has done nothing to clothe him with power or authority as against another lien claimant.

Cases where fixtures or other material not delivered have been specially prepared and their value, apart from the structure for which they have been prepared, is little or nothing, make a strong appeal for consideration in equity, yet to allow the lien on that account would lead to unending uncertainty, doubt and confusion and to prejudice of others contemplating furnishing material or who have furnished labor and material.

Material delivered upon the premises constitutes notice, not only to the owner, but to other materialmen, laborers and contractors of potential charges against the property, but materials not delivered, in the absence of actual knowledge, cannot do so.

The case of *Western Hdwe. & Metal Co. vs. Maryland* [317] *Casualty Co.* (105 Wash. 54) was a bond case; that is, a suit upon a statutory bond to secure those performing work or furnishing materials in the installation of a heating plant in a school, which bond is, by statute, required in such cases in lieu of the security which, by the lien statute, is afforded laborers and materialmen in the improvement of private property.



It has been argued that there is no distinction between such a case and the present; but there is this distinction: A surety on the bond stands behind, or in the shoes of, the principal. He has no lien upon the property. While, as between the lien claimants, there are primary equities to be considered which only remotely affect a surety, if at all. A particular lien claimant has a right, not only to look to the property improved, but to the value of the improvement as it progresses and to the materials assembled upon, and delivered at the property for its improvement.

Claims of lien for material not actually delivered at the bank building are denied. The following Washington cases—the construction of which court, of the statute involved, this court is bound to follow—require such holding:

Knudson-Jacob Co. v. Brandt, 44 Wash. 68;

Crane Co. v. Farnandis, 46 Wash. 436;

Tsutakawa v. Kumamoto, 53 Wash. 231;

Gate City Lbr. Co. v. Montesano, 60 Wash. 586;

Western Hdwe. & Metal Co. v. Maryland Cas. Co., 105 Wash. 54;

Holly-Mason Hdwe. Co. v. National Surety Co., et al., 107 Wash. 74.

Neither lien nor judgment will be decreed for any material delivered and reclaimed by the lienor under order of the court, or otherwise.

In the contracts of a number of the lien claimants, there is a provision reciting a waiver of any lien on account of the work and material to be furnished under the contract. These waivers were exe-

cuted upon the strength of statements made by representatives of the defendant in negotiating the contracts that [318] waiver had been made by all others who had contracts and would be required of those with whom contracts had not yet been made. It was further represented that funds had been provided or secured to pay for the construction of the building. These statements were erroneous.

Taking into account the presumption that one would not lightly waive the security afforded by a lien, it is clear that these waivers are avoided, and it is not necessary to determine whether there was actual fraud in the representations made or not for, if there was not actual fraud, the injurious effect upon the claimants was the same. The representations constitute constructive fraud. If belief in the facts by the negotiating parties were considered only as a mutual mistake, the avoiding of the waiver would be the same for the claimants entered upon the performance of their contracts before discovery of the mistake.

Mr. Haskell, as receiver of the Bank—not as receiver of the Building Company, acquired a note and mortgage of the Building Company for \$70,000. This mortgage was outstanding at the time the various contracts relating to the construction of the building were made. The receiver's purpose was to protect the property from foreclosure of the underlying mortgage and, in form, it was a purchase by him. The deed from the bank to the Building Company of this property was a warranty deed. Under these circumstances, the ordi-

nary rule that it would be inequitable for the court to sanction a receiver's act for the benefit of one set of creditors, and at the same time, to the injury of other creditors, lends no support to those now contending for, and invoking this rule, for the Bank's creditors are not the Building Company's creditors; nor are the latter bank creditors, and, while Mr. Haskell is receiver of both the Bank and the Building Company, the money used in taking up the mortgage was the Bank's and he was acting as the Bank's receiver, out of the control of this court, in so doing. If, because of the relation between the Bank and Building Company, it is sought to apply such a rule upon all [319] equitable considerations, it can be invoked rather by the lien claimants than by the Bank's receiver.

The deed from the Bank to the Building Company being a warranty deed, if the lien claimants were not in privity with the owner so that they could maintain suit against the Bank upon the warranty, the Building Company and its receiver could maintain such a suit and anything realized therefrom could be subjected to judgments recovered by the lien claimants.

The Bank's receiver, in taking up this mortgage was merely seeking to prevent the further increase of claims against the trust estate in his hands, which, if suffered, would result in the dilution of the assets and could not but prejudice the depositors and other creditors of the Bank. Under these circumstances, to hold the Bank receiver's action in taking up the underlying mortgage a purchase, whereby he escaped

liability upon the warranty and also secured a position of advantage where he could defeat the lien claimants, not only has no equity in it, but would be highly inequitable.

Were it not for the fact that control of the Building Company was had by the Bank at all times, it might be that the failure of the Building Company to deliver to the Bank the second mortgage bonds, would free the Bank from obligation on the warranty and leave its receiver in a position to purchase the underlying mortgage; but, even of that, there must be grave doubt, in view of the fact that the breach of the warranty and uncertainty arising therefrom may have been one of the causes preventing the issuance and delivery of such bonds. If it was the intention of those manipulating the affairs of both the Bank and the Building Company to take a part of the \$600,000 sought to be realized on the first mortgage of the Building Company's property and pay off the \$70,000 mortgage and thereby make good the Bank's written warranty, it is not perceived that any equities are born to the Bank out of the arrangement, particularly so far as the lien claimants are concerned, for the persons so intending were [320] representing to the lien claimants at all times that the \$600,000, to be realized, was for the completion of the building. The mortgage for \$600,000 was to raise that amount, not less.

The Bank was not a stranger, but its control of the Building Company created, rather, a trust relation. The Building Company was, for many pur-

poses, virtually the agent of the Bank to accomplish one of its purposes, that is, the improvement of its property and the providing it with a banking house.

It is not necessary to consider the inconsistency of the Bank receiver's position in asserting the \$600,000 mortgage based on a title warranted by the Bank and, at the same time, asserting the \$70,000 mortgage, the existence of which breached the warranty on which the value of the \$600,000 mortgage rested. The right of subrogation is an equitable right, and there is no equity in such a contention. The Bank's receiver also asserts the priority of the \$600,000 mortgage held by it, which was issued by the Building Company to a trustee to be placed in raising that amount for the construction of the building.

It is not deemed necessary to determine whether the Bank and Building Company were identical for all purposes or this purpose, or whether the Bank was liable to any extent because of the mortgage, or whether there was actual fraud in the handling of the \$600,000 mortgage. The Court finds from the evidence that, for one purpose, at least, the Building Company was, in substance, the agent of the Bank, to provide it suitable banking quarters, and that anything intended, or done beyond that was incidental thereto. Under these circumstances, whatever the rights of a stranger, who had acquired the mortgage and made advances thereon to a less amount than its face, might be, I conclude that, on account of the trust relation growing out of the Bank's virtual control of the Building Company,



it could not obtain any advantage over the lien claimants by acquiring such mortgage.

I further find that the advances made by the Bank to [321] the Building Company were—except, possibly, the later ones—made, not upon the credit of the \$600,000 mortgage, which it was still sought to dispose of in eastern cities, but that such advances were made upon the strength of an arrangement whereby the Bank was to take certain second mortgage bonds. If the \$600,000 long term mortgage were placed to secure a debt of a lesser amount immediately falling due, it must be held a pledging for a pre-existing debt and void.

Washington State Constitution, Art. XII, Sec. 6;

Farmers Loan & Trust Co. v. San Diego St. Car Co., 45 Fed. 518;

Hemerer et al. v. St. Louis Blast Furnace Co. et al., 212 Fed. 63;

Memphis & Little Rock R. R. Co. v. Dow, 120 U. S. 287; 30 L. Ed. 595;

In re Progressive Wall Paper Company, 224 Fed. 143.

I find no equity in the Bank, or its receiver arising out of these transactions and hold the Bank's receiver a general creditor on account of such advances.

On behalf of the receiver of the Bank it is sought to establish a lien for the purchase price of the property superior to that of the lien claimants. As already pointed out, the Building Company was a company organized and controlled by the Bank to

improve its property and secure for itself a banking-house. Under these circumstances, such a contention must fall; but this is not the only reason. The arrangement appears to have been that the Bank would take from the Building Company, in payment for the property, a portion of the \$750,000 issue of second mortgage bonds, which were never issued. It was the balance of these bonds, that was to secure the \$400,000 which the Building Company was representing—when it contracted with the lien claimants—had been provided, along with the money to be raised on the \$600,000 mortgage for the completion of the building. There having been a failure to provide the money represented as provided and available, [322] and the deed to the property being a warranty deed, it would be inequitable to establish the priority of a purchase money lien over the other lien claimants. Reaching this conclusion, it is not necessary to consider the other questions which have been urged upon this phase of the case.

It has been contended on behalf of the lien claimants that they are entitled to judgment against the Bank, as well as against the Building Company. While in certain particulars the Building Company is to be considered merely as the agent of the Bank, yet the property of the Building Company, which it was represented to have, still remains to be applied in satisfaction of any established claims. It is true that the representations that \$600,000 had been secured upon the first mortgage and that \$400,000 additional was available were incorrect. Still the

representations fall short of such a fraud on the part of the Bank and its agent as would authorize the Court in holding that the debt created was a debt of the Bank, as well as the Building Company. These were not representations that the Building Company owned property which it did not own, but are rather to be considered as that it had obtained credit, a part of which was secured upon such property, which it did not actually have.

The fact that construction under the contract was not completed renders it necessary, in the case of a number of claims, to adopt some other measure of recovery than the contract price, the most equitable is to approximate, as nearly as possible, the value of that which was furnished and done in partly completing the contract, having primarily in view the contract price and the relative proportion of the contract performed. But adopting this rule does not in any way affect the ranking of the lien claimants, or give them material or labor liens, instead of that of a contractor.

The following is a statement of the amounts of recovery fixed and allowed, the rank of the liens and the attorneys' fees allowed: [323]

Judgment and labor lien will be decreed the following claimants in the following amounts:

|                        |         |
|------------------------|---------|
| N. A. Hansen.....      | \$59.90 |
| A. J. Van Buskirk..... | 59.90   |
| C. W. Crouse.....      | 49.92   |
| F. L. Swain.....       | 59.90   |
| D. A. Trolson.....     | 59.90   |
| Fred Gustafson.....    | 59.90   |



|                       |       |
|-----------------------|-------|
| E. Scheibal.....      | 59.90 |
| Paul Scheibal.....    | 59.90 |
| F. J. Kazda.....      | 59.90 |
| W. Donnellan.....     | 59.90 |
| P. Hagstrom.....      | 54.90 |
| Arthur Purvis.....    | 59.90 |
| Roy Farnsworth.....   | 59.90 |
| C. B. Dustin .....    | 59.90 |
| L. J. Pettifer.....   | 59.90 |
| Charles Bond.....     | 59.90 |
| L. H. Broten.....     | 59.90 |
| W. Canaday.....       | 49.92 |
| L. R. Lilly.....      | 59.90 |
| F. McNair.....        | 59.90 |
| Dave Shields.....     | 59.90 |
| Ed Lindberg.....      | 44.53 |
| Joe Tikalsky.....     | 48.88 |
| F. Mente.....         | 44.13 |
| C. Gustafson.....     | 38.89 |
| George Larson.....    | 44.14 |
| F. Marcellino.....    | 30.66 |
| M. Swanson.....       | 24.23 |
| William Griswold..... | 41.88 |
| O. E. Olson.....      | 58.38 |
| C. I. Hill.....       | 8.97  |
| Emil Johnson.....     | 6.98  |
| C. Peterson.....      | 41.88 |
| F. A. Fetterly.....   | 42.63 |
| Earl Whitford.....    | 44.13 |
| Thomas S. Short.....  | 59.90 |
| George W. Hicks.....  | 41.88 |

Attorney's fee allowed, \$925.

Judgment and labor lien will be decreed F. R. Schoen for \$198, and a lien for materials, \$10.80. Attorney's fee, \$40.

Judgment and labor liens will be decreed on account of labor performed by the following named persons in the various amounts stated:

|                       |         |
|-----------------------|---------|
| A. E. Smith.....      | \$41.88 |
| J. H. Ehret.....      | 11.97   |
| John Gallagher.....   | 8.97    |
| Pat Keenan.....       | 54.13   |
| H. R. Doremus.....    | 41.88   |
| R. Davey.....         | 41.88   |
| L. A. Williams.....   | 11.97   |
| David Bain.....       | 41.88   |
| P. J. Bergsten.....   | 17.45   |
| Charles Nichols.....  | 10.10   |
| E. H. Geister.....    | 11.91   |
| Roy Hix.....          | 55.88   |
| [324]                 |         |
| Fred Denham.....      | \$55.88 |
| Harry R. Pitcher..... | 51.88   |
| John Blixt.....       | 55.88   |
| John Hampson.....     | 41.88   |
| J. S. Kelly.....      | 35.90   |
| C. A. Anderson.....   | 11.97   |
| L. J. Hunt.....       | 46.39   |
| B. F. Wells.....      | 11.97   |
| C. Colburn.....       | 9.35    |
| Robert Comar.....     | 41.88   |
| J. F. Brislin.....    | 54.89   |
| Erich Holmer.....     | 42.26   |
| John Lentz.....       | 8.97    |

|                       |        |
|-----------------------|--------|
| J. M. Collins.....    | 38.89  |
| W. S. Snyder.....     | 58.21  |
| C. O. Bodum.....      | 9.72   |
| W. Tabor.....         | 49.38  |
| M. P. Jones.....      | 8.97   |
| Dan Haley.....        | 35.90  |
| Henry Poff.....       | 8.97   |
| C. A. Carlson.....    | 51.88  |
| H. Simons.....        | 55.88  |
| Bert Morton.....      | 8.97   |
| H. J. Ramsey.....     | 55.88  |
| W. P. Wells.....      | 55.88  |
| J. H. Calhoun.....    | 11.97  |
| Ed Hobson.....        | 13.47  |
| N. L. Morris.....     | 55.88  |
| Andrew Bratton.....   | 56.88  |
| D. E. Kennan.....     | 11.97  |
| W. K. Herendeen.....  | 8.97   |
| F. H. Madsen.....     | 95.34  |
| Roger E. Chase.....   | 107.25 |
| David L. Glenn.....   | 18.00  |
| W. M. House.....      | 47.89  |
| S. Rounsley .....     | 41.88  |
| I. Lorass.....        | 49.38  |
| J. M. Kryci.....      | 55.88  |
| A. Johnson.....       | 41.88  |
| F. N. Bergen.....     | 41.88  |
| C. Olson.....         | 41.89  |
| Samuel Rothstein..... | 13.33  |

\$14.80 is allowed for the expense of filing these liens and an attorney's fee of \$1,000 is allowed

Judgment and a materialman's lien will be decreed upon the claim of the Puget Sound Iron & Steel Works for \$495.90. While this claim has been asserted as a labor lien, yet the work was done away from the building at claimant's shop upon material brought from the building to the shop and returned to the building. Under these circumstances, the lien should be ranked as a materialman's lien and not as a labor lien. An attorney's fee of \$100 is allowed.

Judgment and labor lien are decreed F. H. Godfrey in the amount of \$750. Attorney's fee of \$125 allowed. [325]

Judgment and labor lien decreed W. L. Owens in the amount of \$11.95. Attorney's fee waived.

Judgment and labor lien decreed C. H. Boedecker in the amount of \$5.95. The fee for filing the lien, 50¢, allowed. Attorney's fee waived.

Judgment and lien for material furnished will be decreed the City Lumber Agency for \$708.54. Attorney's fee, \$125.

Judgment and lien for material furnished by the St. Paul & Tacoma Lumber Company will be decreed in the amount of \$708.33. Attorney's fee \$125, allowed.

Judgment and lien for material furnished will be decreed Hunt & Mottet in the sum of \$462.25, of this amount, \$111.75 represents material for which E. E. Davis & Company, contractors, were primarily liable. Therefore, the payment in full of Hunt & Mottet's bill will reduce the amount hereafter al-

lowed Davis & Company by \$111.75. Attorney's fee of \$100 allowed.

Judgment and materialman's lien will be decreed Savage-Scofield Company for \$9,342.25. Attorney's fee, \$350, allowed.

Judgment and lien for material will be decreed the Henry Mohr Hardware Company in the amount of \$36.84. An attorney's fee of \$25 is allowed.

Judgment and materialman's lien will be decreed the Far West Clay Company for \$22,165.34. Attorney's fee, \$2,500, allowed.

Judgment and lien for material will be decreed the P. & G. Lumber Company for \$40.80. Attorney's fee allowed, \$25.

The Colby Star Iron Works will be allowed to amend its lien and complaint and judgment and lien for material will be decreed in the amount of \$1,770.12. Attorney's fee will be allowed in the amount of \$175.

Crane & Company ask a lien on account of certain water-closet fixtures. This is disallowed because of reasons already stated. It has been urged on behalf of Crane & Co. that the rule should not be applied because one part of each set of fixtures [326] which part was in the evidence called a "Hulbert fitting," had been delivered and installed in the partly constructed building. The Court will not pause to inquire whether there may not be cases where the above rule should be relaxed or an exception made to it, particularly if the part of the fixture not delivered were worthless, or greatly diminished in value if it lacked the part installed, as the part

delivered of such an article would contain certain elements of notice to others interested in the work upon the property, but such is not this case. The Hulbert fitting is, substantially, in the class of a stock fitting which, when furnished, these undelivered water-closets will again be made complete.

The estimate upon which Olsen Company was paid a percentage shows that there is no difficulty in arriving at the value of a Hulbert fitting, apart from the assembled water-closet.

Crane & Company, while an entire contract, will have no lien for the portion not delivered. The Hulbert fittings were delivered, and will be allowed at the price billed, \$20, each, and the one water-closet delivered at \$51.15.

Crane & Company are decreed a lien as a materialman for the following items and amounts:



| Quantity | Size   | Description.            | Price.   | Total.    |            |
|----------|--------|-------------------------|----------|-----------|------------|
| 1241-5   | ½"     | Blk. Gen. W. I. Pipe    | \$ 6.92  | \$ 85.91  |            |
| 1842-10  | 1¼     | do                      | 17.58    | 323.97    |            |
| 1350-0   | 1½     | do                      | 21.02    | 283.77    |            |
| 764-0    | 2½     | do                      | 47.00    | 359.08    |            |
| 64-1     | 3½     | do                      | 74.11    | 47.49     |            |
| 125-10   | 5      | do                      | 118.95   | 149.67    |            |
| 134-3    | 6      | do                      | 154.24   | 207.07    |            |
| 255-10   | 8      | do                      | 208.16   | 532.54    |            |
| 2076-10  | ¾      | do                      | 10.59    | 219.94    |            |
| 1463-1   | 1¼     | do                      | 20.17    | 295.10    |            |
| 3325-6   | 1½     | do                      | 25.31    | 841.68    |            |
| 1182-6   | 2½     | do                      | 54.41    | 643.49    |            |
| 148-2    | 3½     | do                      | 85.56    | 126.77    |            |
| 768-7    | 8"     | do                      | 178.58   | 1,372.53  | \$5,489.01 |
| 1        | 4"     | #1028 Galv. Drg. Y      | 6.75     |           | 5.40       |
| 2769' 7" | ¾      | Blk. Genuine W. I. Pipe | 8.80     | 243.72    |            |
| 2588-2   | 1"     | ditto                   | 13.00    | 336.46    |            |
| 1208-5   | 2"     | ditto                   | 30.45    | 367.96    | 948.14     |
| [327]    |        | Forwarded               |          |           | \$6,442.55 |
|          |        | Forwarded               |          |           | \$6,442.55 |
| Quantity | Size   | Description.            | Price.   | Total.    |            |
| 832-7    | 3"     | Blk. Gen. W. I. Pipe    | \$ 61.96 | \$ 515.87 |            |
| 202-11   | 4"     | ditto                   | 87.58    | 177.72    |            |
| 56-11    | 10"    | ditto                   | 226.48   | 128.91    |            |
| 2587-6   | ½"     | Galv. Gen. W. I. Pipe   | 8.62     | 223.04    |            |
| 1340-8   | 1      | ditto                   | 15.65    | 209.81    |            |
| 1453-4   | 2      | ditto                   | 35.50    | 515.93    |            |
| 2806-11  | 3      | ditto                   | 71.65    | 2,011.16  | \$3,782.44 |
| 1        | 3 x 1¼ | Galv. Mall. Tee         | 7.60     |           |            |
| 1        | 3 x 2  | ditto                   | 7.60     | 6.08      |            |
| 2        | 3 x 2  | Gace Bushings           | .70      | 1.33      | 7.41       |

|       |         |                                   |            |          |       |
|-------|---------|-----------------------------------|------------|----------|-------|
| 1     | 6       | #1020 Galv. Dr. Ft.               | 16.50      | 16.50    |       |
| 39    | 6 x 4   | 1021 ditto                        | 18.50      | 721.50   |       |
| 6     | 6       | 1028 "                            | 18.50      | 111.00   |       |
| 2     | 6       | 1001 "                            | 13.15      | 26.30    |       |
| 1     | 6       | 1003 "                            | 11.00      | 11.00    |       |
| 8     | 4 x 1½  | 1029 "                            | 7.40       | 59.20    |       |
| 2     | 4 x 3   | 1029 "                            | 7.40       | 14.80    |       |
| 10    | 4 x 4   | 1028 "                            | 6.75       | 67.50    |       |
| 4     | 4 x 4   | 1020 "                            | 6.15       | 24.60    |       |
| 87    | 3 x 1½  | 1029 "                            | 5.10       | 443.70   |       |
| 4     | 3       | 1028 "                            | 4.65       | 18.60    |       |
| 1     | 3       | 1001 "                            | 3.10       | 3.10     |       |
| 3     | 3       | 1003 "                            | 2.55       | 7.65     |       |
| 39    | 2½ x 1½ | 1029 "                            | 4.00       | 156.00   |       |
| 3     | 2½      | 1028 "                            | 3.70       | 11.10    |       |
| 6     | 2       | 1024 "                            | 2.30       | 13.80    |       |
| 18    | 2       | 1020 "                            | 1.50       | 27.00    |       |
| 35    | 2       | 1059 "                            | 3.50       | 122.50   |       |
| 20    | 2       | 1001 "                            | 1.15       | 23.00    |       |
| 30    | 2       | 1003 "                            | 1.00       | 30.00    |       |
| 120   | 1½      | 1024 "                            | 1.50       | 180.00   |       |
| 100   | 1½      | 1020 "                            | 1.00       | 100.00   |       |
| 10    | 1½      | 1057 "                            |            |          |       |
| 50    | 1½      | 1058 "                            | .70        | 42.00    |       |
| 250   | 1½      | 1003 "                            | .67        | 167.50   |       |
| 50    | 1½      | 1001 "                            | .72        | 36.00    |       |
|       |         |                                   |            | <hr/>    |       |
| 38-5% |         |                                   | \$2,434.35 | 1,433.83 |       |
| 86    |         | Hulbert Fittings at \$20.00.....  |            | 1,720.00 |       |
| 1     |         | complete water closet .....       |            | 51.15    |       |
| 6     | 4" Clo  | Galv. Nipples .....               | 1.35       | 5.67     |       |
| 2     | 2"      | 1005 Galv. Drg. Fit.....          | 1.00       | 1.60     | 7.27  |
|       |         |                                   |            | <hr/>    |       |
| 3     | 4"      | 1003 Galv. Drg. 45 Deg. Ells..... | 4.00       |          |       |
| 5     | 3"      | 1003 ditto .....                  | 2.55       | 19.80    |       |
| 24    | 1½      | Galv. Mall. Locknuts .....        | .52        | 5.34     | 25.14 |
| 1 Pe  | 6"      | Nat. FW Galv. Pipe 2¾".....       | 266.00     | .61      |       |
| 2     | 6"      | Threads .....                     | 1.05       | 2.10     | 2.71  |
|       |         |                                   |            | <hr/>    |       |
| 3     | 6       | #1003 Galv. Dr. Fittings.....     | 11.00      | \$33.00  |       |
| 1     | 6       | 1001 ditto .....                  | 13.15      | 13.15    | 36.92 |
|       |         |                                   |            | <hr/>    |       |

|          |       |                            |          |         |             |
|----------|-------|----------------------------|----------|---------|-------------|
| 1        | 6 x 4 | Blk. Bushing .....         | 1.25     |         | 1.00        |
| 2        | 6"    | Threads (on own pipe)..... | 1.05     |         | 2.10        |
| 3 Pcs    | 6"    | Galv. Pipe 0' 3½".....     | 227.00   | \$2.00  |             |
| 6        | 6"    | Threads .....              | 1.05     | 6.30    | 8.30        |
|          |       |                            |          |         | <hr/>       |
| [328]    |       | Forwarded .....            |          |         | \$13,520.82 |
|          |       | Forwarded .....            |          |         | \$13,520.82 |
| Quantity | Size  | Description.               | Price.   | Total.  |             |
| 4        | 6 x 4 | #1021 Galv. Dr. Tees.....  | \$18.50  | \$74.50 | 48.10       |
|          |       | 35                         |          |         |             |
| 2        | 6"    | 1000 Galv. Dr. Elbows..... | \$11.00  | \$22.   | 28.60       |
| 2        | 6"    | 1003 do 45 Deg. " .....    | 11.00    | 22.     |             |
|          |       |                            |          |         | <hr/>       |
|          |       | 35%                        |          | \$44.00 | 28.60       |
| 2411-11  | 4"    | Galv. Gen. W. I. Pipe..... | 101.39   |         | 2,445.45    |
| 1        | 6 x 3 | Blk. Bushing .....         | \$ 1.25  | 5%      | 1.19        |
| 1 Pc     | 6"    | Galv. Pipe 0' 3½" TBE..... | \$266.00 | \$ .77  |             |
| 2        | 6"    | Threads .....              | 1.05     | 2.10    | 2.87        |
|          |       |                            |          |         | <hr/>       |
|          |       |                            |          |         | \$16,047.03 |

Attorney's fee allowed, \$2,000.

The Washington Brick, Lime & Sewer Pipe Company makes a claim for a lien upon the ground that, although the material prepared by it was not delivered at the premises, the material was specially prepared for this building and is of very little worth for any other purpose. The lien is denied upon the authority of *Holly-Mason Hdwe. Co. vs. National Surety Company et al.* (107 Wash. 74), and other cases cited.

It is contended that a lien should be allowed for that part of the material shipped from Spokane to Tacoma and stored in the railroad yards at Tacoma. Under the foregoing authority the lien will have to be denied—even though it was shown that the owner had requested the shipment to Tacoma. The Court, however, finds that the shipment was made by claimant, rather to avoid the higher freight rates imminent, than to accommodate the Building Company, although it may have been in part for the latter purpose, and that it never passed to the possession and control of the Building Company.

The contention on the part of the defendant Building Company that a part of the title shipped was discolored is not established. Further evidence will have to be taken to establish the amount of the judgment to which this claimant is entitled, as a satisfactory finding cannot be made upon the evidence already [329] taken as to claimant's damages due to defendant's breach. The attorney's fee being an incident of the lien, the claimant will only recover the statutory attorney's fee of \$15.

McClintoc-Marshall Company, a Pennsylvania corporation, asserts a lien for structural steel. The value of the steel is alleged to have been \$263,437.54; a payment of \$86,805.17 is admitted and \$176,632.37 with interest claimed.

Defendant admits a value of \$260,000; alleges payment of \$87,814.34, and claims an offset because of defective fabrication for the amount of \$3,000; further damage of \$14,052.76, on account of delays in delivery because of freight charges increased pending delivery and \$50,000 because of claimed loss of rentals and interest. The defendant further asserts that the suit cannot be maintained because of an arbitration clause in the contract, defendant denies the jurisdiction of the court on account of liens asserted by interveners where the amount is less than \$3,000.

The Court has heretofore upheld the jurisdiction of the court and found the arbitration provision inapplicable, and that defendant, under the terms of the contract has no right to offset because of loss of rent and interest alleged to have been caused by delays in delivery.

Under the evidence, I conclude that the delays were occasioned by defendant's failure to furnish details and drawings promptly and that no offset is allowed because of increase in freight charges.

The Court finds no evidence of damage to defendant because of defects in fabrication, in excess of that conceded by complainant; to wit, \$2,000. The right to a materialman's lien is established. Attorney's fee allowed, \$12,500.

Judgment will be decreed the Ajax Electric Company for \$203.70, of which a contractor's lien will be decreed them in the amount of \$153.09. Attorney's fee allowed, \$40.00.

Judgment and contractor's lien will be decreed Mullins [330] Bros. for \$319.08. An attorney's fee is allowed of \$30.00.

The H. C. Green Iron Works asserts a labor lien for \$1,395.62, a materialman's lien for \$4,429.68, and admits a credit of \$920.62, leaving a balance due of \$4,904.68. The Court has experienced considerable difficulty in settling the issues upon this claim. The defendant denies the reasonable and agreed value of the labor performed in excess of \$1,000 and denies the reasonable and agreed value of the material furnished in excess of \$4,000.

If these denials as made were treated as admissions of the value up to the amounts mentioned, binding upon the Court, the issue would be much simplified; but, in view of the stipulation on the trial that all claims must be proven, this cannot be done.

At the trial, upon the receiver's admissions, the lien and pleadings were considered as amended to state a claim in the amount of \$4,656.88.

It is held that this claimant did not forfeit a right to lien because of making an excessive claim.

The first contract—a written contract—was for elevator cells and furnishings and window toggles. A later, oral, contract was entered into for furnishing and installing a flag pole for \$1,500. The pole was furnished but not installed. \$750 is allowed for



this flag pole and the lien therefor will take rank as a contractor's lien.

Under the written contract, claimant was to furnish and install all material covered thereby, except the window toggles. It was to furnish these, but was not required to install them. The billed value of these toggles amounted to \$437.50, of which 75% has been paid, leaving a balance due of \$109.35, for which claimant is entitled to a lien with the rank of a materialman's lien. Other material was delivered under this contract to the amount of \$789.50, 75% of which was paid, leaving a balance due of \$197.38, for which claimant is entitled to a lien with the rank of a contractor. The total personal judgment to which claimant is entitled, including the lien items above mentioned, is \$4,656.88. [331] Attorney's fee of \$150 will be allowed.

There are certain features relating to the claim of E. E. Davis & Company which require special consideration. That company had a contract for the erection of the steel, which was almost completely performed at the time of the termination of the building operations. Upon the failure of the Bank and Building Company, Davis & Company were notified by the representative of the Building Company, Mr. Wells, who was the superintendent in charge of operations, to stop work. Davis & Company contend that this effected a rescission of the contract. They sue upon the *quantum meruit* for what they had done. Claimant contends that this works two important changes in what would otherwise result:

That rescission destroyed the reason of the lien waiver provision in the contract. Having already held that the lien waiver would not be enforced for other reasons, it is not necessary to consider what effect, if any, such rescission had upon the waiver provision.

Davis & Company appear further to assert that, as their contract was for the erection of the steel which was almost entirely accomplished by laborers employed and paid by them, that they, to the extent of their pay-roll expenditures, are entitled to be ranked as lienors for labor, rather than contractor-lienors. They appear further to contend that the rescission and their claim to have their pay-roll expenditures so ranked are in some way strengthened or advanced by reason of the rescission and their suit on the *quantum meruit*.

Whatever effect the rescission may have had upon the rights and liabilities of Davis & Company and the Building Company, as between themselves, it is not perceived how it can in any way affect the equities as between Davis & Company and other lien claimants. No part of this claim should rank as other than that of a contractor.

Judgment and contractor's lien will be decreed in the amount of \$30,343.69, less the \$495.90, when paid, already decreed [332] the Puget Sound Iron & Steel Works for straightening certain iron or steel entering into the building which was bent by the falling of a load caused by the breaking of a sling provided by this claimant, which latter is herein ranked as a materialman's lien, and also less

the item, when paid, already allowed herein as part of the Hunt & Mottet lien. An attorney's fee of \$3,500 is allowed.

Under the authority of *Western Hdwe. & Metal Co. vs. Maryland Casualty Co.* (105 Wash. 54), the Tacoma Millwork Supply Company seeks to establish a lien for certain material specially prepared and other material partly prepared for the building, but not delivered upon the building site, but still held in their own plant.

This Company had two contracts which may be briefly described: One to provide material at certain prices, the other to install, or place it in the building at a certain price.

Certain features connected with this claim require special consideration. The Court holds that this claimant did not forfeit the right to its lien by claiming an excessive amount and that neither the fact of examination and approval of the material by Wells, Webber and Drury at the factory, nor that the material was of a character, the delivery of which at the site before time for installation would have greatly damaged it, nor the further fact that certain of the material was primed and painted in claimant's factory or warehouse by another contractor changes the rule, already announced herein, for there is nothing in the statute to show an intent to make any exception as to what would constitute furnishing or delivery.

The Court further holds that the question of delivery, involved under this claim, is not affected by this claimant's delivering the key of the ware-

house where the material was stored to the receiver after his appointment, Claimant's counsel has argued:

“The contract itself says that the material shall be taken off the hands of the Mill Company as rapidly as manufactured. The owner to provide dry storage space. This appears in the proposals attached to the contract. The testimony further goes to show that in talking with Webber who was in full charge of operations, it was found [333] around October, November and December that the building was not far enough along to take into the various parts mentioned; that it was then arranged that the Mill Company would get some dry storage space the rentals to be adjusted by Webber at the conclusion of the contract, and would store whatever it could for the Company at its own warehouse at the plant; that payments were made both on that stored in the warehouse and that stored at the plant as well, and of course, upon those frames stored and delivered into the building; that Wells several times came to the warehouse and the factory and accepted all of the material mentioned; that several times R. T. Davis urged Wells and Webber to take this material off their hands and put it on the building; that Wells particularly, as late as the first two days in January told Davis that he would have to hold it for them that they had no place in the building and that it would be damaged.”

While the conduct above described would amount to a recognition of liability by defendant because of delays and inability to receive the material at the building being constructed, it does not amount to, or take the place of requisite delivery or furnishing material contemplated in the lien statute. Delivering or furnishing material at the building and the work done upon it not only affords the other potential lienors knowledge of the enhanced value of the property by reason thereof, but affords notice to them and warning of what is being placed against the property by way of charges or liens—a warning and notice not afforded by the storage or acceptance of material elsewhere.

The Court holds that the contract provision for a \$50 penalty for delay in performance does not affect the question of a right to, or want of lien in this case for not delivering the material and it is further held that nothing in the nature of a purchase money lien would be created as long as the seller retained possession of the material for, as long as he did so, he would not need it. (*Hunter vs. Blanchard*, 18 Ill. 318; 68 Amer. Dec. 547).

Under the \$30,000 erection contract, claimant's testimony was that the actual work done amounted to \$6043. The work going to make up this item is described in the testimony as follows:

“Q. If you had been furnishing sash, for instance, on that building, and it did not fit, you would be billed back for the additional cost, wouldn't [334] you, for making it fit?



A. I am not speaking of the fit of the sash. I am speaking of the additional work that would ordinarily be done on the building, such as trimming off the stiles of the sash, and also trimming off the bottoms of the stiles and seeing that those fit in there without any much further work. Ordinarily there will be considerable work on the building, taking these sash as they were often delivered, fitting them into these frames. Then again we built up the window casings, we mitered them together and glued them up, and also the door casings, so that we would save ourselves that expense on the building and facilitate the work.

Q. What did that \$65,000 contract cover?

A. That covered just the furnishing of the bare materials.”

While the window casings or frames mentioned in this testimony were delivered, the sash mentioned were not delivered. Both were called for by the contract for material. As long as the value of such work on the sash is not segregated from that work on the frames, the entire item will be disallowed as not lienable under the proof. An item of profit under this contract, asserted as lienable, is also denied.

Under the contract for material upon 831 window frame openings manufactured by this claimant, billed at \$8310, there was paid \$6232.50. The evidence shows that of these, 691 were actually delivered and payments made should be applied *pro rata* upon those delivered and those undelivered.



While the various sizes of these frames may afford evidence of some difference in value, yet, by reason of the fact that the work of fashioning the frames far exceeds the value of the material in the frames—together with the further fact that 680 of these frames were billed or estimated at \$6800 and 151 of them were billed or estimated at \$1510—convinces the Court that a fair valuation on the 691 frames and openings delivered would be \$6910. Prorating the total payment, \$6232.50, shows a payment of \$7.50 upon each frame or opening, leaving unpaid on each \$250, or a total upon those delivered (691) of \$1727.50, for which this claimant is entitled to a materialman's lien. Nothing will be added thereto by way of profit claimed. [335] Attorneys' fee fixed at \$350.

A personal judgment under the first contract in the amount of \$6043 will be allowed.

There is testimony that, under the material contract, the material was 90% complete. There is other testimony that 100% of the material was furnished and 40% of the work done on it; but I am unable to reach a satisfactory conclusion under the testimony upon the question of the amount for which claimant is entitled to a personal judgment. The question will be settled after argument upon settling of the decree.

Ben Olson Company asserts a lien for \$49,686.10. It will be necessary to hear further argument in order to determine the exact amount for which that Company is entitled to recover a personal

judgment, as I have been unable to reconcile the various figures and statements.

No part of this Company's claim would be entitled to be given the status of a laborer's lien. A contractor furnishing labor and material, or material should not, by reason of that fact, be changed from the status of a contractor to that of a materialman, or labor lien claimant.

The following have been established as offsets or deductions to the lien items claimed:

Paid by defendant to Olson Company, \$12,470.11.

After suit was started, Olson Company was allowed to withdraw certain material already delivered by it to the building site.

As between the lien claimants, equity requires that these payments be applied on lien items not so recovered.

Olson Company will only be allowed for one water closet installed and \$20 for each Hubert fitting, with 15% profit thereon as a reasonable allowance to be added to the \$20 for advance of the jobber or retailer over and above the wholesale price established by Crane & Company. [336]

All, or substantially all of the Crane & Company lien overlaps that of Olson Company. A deduction must be made from the latter upon this account. The question remains as to the amount of the deduction. While not entirely clear, I find that the preponderance of the evidence shows the overlap to be complete. On account of the application of payments made to Crane & Company by Olson Company, it results that no part of the al-

lowable lien items of Olson Company, supplied by Crane & Company has been paid for by the former company, yet they are charged by Olson Company to the defendant at 50% advance over the price charged and liened by Crane & Company. Such a charge for goods, payment for which has not been made, is unconscionable, at least so far as other lien claimants are concerned.

Olson Company took the contract for \$91,000, \$1000 representing the agreed value of old radiators, of which \$8,000 has been figured as an allowable profit. Taking this as an admission as to what would constitute a real profit, I conclude that any profit in excess of 15% to be allowed Olson Company for material supplied by Crane & Company and held lienable would be unreasonable and extortionate. It will be further noted that, because of the default of the defendant and Olson Company in not paying Crane & Company, the latter have brought suit and an attorney's fee has been incurred by them in the amount of \$2,000. As between Olson & Company and the other lien claimants, that is an item that should be applied in reduction of Olson Company's lien items established, or at least postponed until the allowed liens of other claimants have been paid. On account of the evidence of extravagant charges for material afforded by the foregoing, I hold that no profit should be allowed or added to the items as charged by this claimant. No lien being established, no attorney's fee will be allowed, other than the statutory fee of \$15.00. The amount of the foregoing deductions exceeds the

value of all material delivered by Olson Company not removed. [337]

Judgment and contractor's lien will be decreed the Otis Elevator Company for \$642.45. Attorney's fee allowed \$125.

The Edward Miller Cornice and Roofing Company seeks a recovery in the total amount of \$5599.10 and to establish a lien under two contracts, one for furnishing certain windows, and the other for furnishing and installing roofing and sheet metal. The Company also seeks to establish a lien for \$16.10 for material which was furnished and \$43 for labor. As to those last two items—\$16.10 is allowed as a materialman's lien and the \$43 is allowed as a contractor's lien.

While there are certain general expressions in the first of these two contracts mentioned that, alone considered, might justify the ranking of the claims under such first contract as a contractor's lien, yet, under the particular provisions of the contract, I find that material actually furnished thereunder would entitle claimant to have his lien ranked as a materialman's; but there was no material actually furnished or delivered at defendant's building under the first contract, although a material amount was secured and partly prepared at complainant's shop.

The second contract provided for the payment of a lump sum for material and the installation of it. Therefore, any claim established under it must be ranked as a contractor's lien.

Under the second contract, work and material

entered into the building in the amount of \$1080 on which \$810 was paid, leaving a balance of \$270 for which claimant is entitled to a lien ranked as a contractor's lien.

On account of the damage incurred upon sundry items, claimant is entitled to a further judgment of \$1600, made up as follows:

On account of difference in the  
price of roofing secured .....\$150.00  
Same, account of copper ..... 200.00  
Same, account of skylight glass 50.00  
Same, account of window glass .. 600.00  
Same, account of galvanized iron..600.00  
[338] ————— \$1600.00

Attorney's fee, \$175, allowed.

Mr. Haskell was appointed receiver of the Bank by the State Court and thereafter as receiver of the defendant Building Company herein by this Court. The appointment by this Court was made upon the assurance of the receiver that, if appointed, he would charge no fee as receiver herein. As receiver of the Bank, his counsel, appointed herein upon his request, was already employed by him in the receivership in the state court. No authority to employ counsel was asked of this court; nor request made to fix the compensation of counsel. Nor was the question of a compensation, other than stated above, called to the Court's attention, although authority at the time of the appointment of the receiver was asked and given to employ caretakers and assistants to protect the property during the receivership.



Under these circumstances, the Court finds that the understanding that there would be no fees asked or allowed the receiver contemplated the services of his counsel as well. No fees will be allowed the receiver's attorney.

While the Court has decided that a lien, if any, of the \$70,000 mortgage should be postponed to all mechanics, materialmen and contractors' liens established herein, the Court has refrained from deciding whether it should be subordinated to any general judgments of lien claimants over and above the established statutory liens, as the question has not been raised or discussed.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Mar. 31, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [339]

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**Exceptions of Tacoma Millwork Supply Company  
to Memorandum Opinion.**

To His Honor Judge CUSHMAN:

The undersigned, Tacoma Mill Work & Supply Company, a partnership, through its attorneys, Flick & Paul, respectfully submits the following exceptions to the memorandum decision filed in the foregoing case as of date of March 31, 1922, received in this office April 3, 1922.

I.

That the Mill Work Company excepts to each and every finding made in said decision aside from those hereinafter specifically excepted.



II.

The Mill Work Company excepts to the findings or conclusions of the Court on pages 3, 4 and 5 to the effect that claims of lien for material not actually delivered to the building are denied.

III.

The Mill Work Company accepts the decisions with relation to holding on waivers of lien in so far as it affects this partnership.

IV.

The Mill Work Company accepts the holding of the decision in relation to the \$70,000 mortgage in so far as it [340] affects this partnership.

V.

The Mill Work Company accepts the Court's holding with relation to the \$600,000 mortgage and advances thereunder.

VI.

The Mill Work Company excepts to that portion of the decisions found on page 10 with relation to its holding that the representation with relation to the available funds, etc., were not fraud on the part of the Bank.

VII.

The Mill Work Supply Company especially excepts to any allowances made in this decision that any other claimants in its same class or to any than those who are prior in law as a preferred class.

VIII.

The Mill Work & Supply Company accepts the holdings of the Court on the question of arbitration.

## IX.

The Mill Work & Supply Company excepts to the findings on page 20 with relation to this partnership to the effect that the material was still on hand at their own plant; and further excepts to the finding that examination and approval of the material by agents of the building company that the delivery at the site before time of installation would have greatly damaged it or its priming and painting at plaintiff's factory or warehouse by another contractor does not constitute a furnishing or delivery in that it does not take into consideration that the direction and order to hold it in a warehouse, when offer of delivery was made, was a direction and order made by the Building Company itself and does not take into consideration that such direction and order was given at a time when a large [341] part of the material was complete and ready for delivery, and that this impeded the completion of the small percentage not yet completed and that this order was given long before the offer of the key to the warehouse, to the receiver after his appointment, and does not take into consideration the offer of material in the pleadings and in open court without qualification, and does not take into consideration the fact that this is special material to be used and usable only in this building and of no value otherwise, and does not take into consideration the fact that it was the Building Company's order that kept the material from placement upon the site, and that said order

was against the wish and the interest of the Mill Company.

X.

The Mill Work Company excepts to each and all of the findings on said pages and prior and following pages which hold that the failure of placement of this material on the site is a necessary incident to a lien, and further excepts to a failure to find that the orders to hold it off the premises were the orders of the Building Company and that the direction to place these especially prepared materials in storage were the orders of the Building Company.

XI.

The Mill Work Company especially excepts to the finding on page 21 and 22 disallowing for the window casings and frames mentioned as having been delivered upon the building.

XII.

The Mill Work & Supply Company excepts to the findings found on page 22 with reference to the 831 window frame openings manufactured by claimant and stated as having been billed at \$8310, and to the matter of computations, and to the allowance of \$1727.50 and also excepts to the attorneys' fee fixed at \$350, and especially [342] excepts to the crediting of the amount paid upon lienable items as distinguished from the nonlienable items, in view of the fact that the Mill Work Company credited said items upon material at the factory which this Court now holds as nonlienable; and for the further reason that the payments made were made many

times before the delivery of the particular windows now referred to on page 22 of said decision, and for the further reason that the very window frames paid for by the \$8310 are now in storage with the exception of 98 which were removed from the storage or the paid window frames to said building.

### XIII.

The Mill Work Company excepts to the allowance of a personal judgment as distinguished from a lien judgment for \$6043 referred to on page 22, and excepts to that portion of the findings in the decision at page 23 which suggests that there was testimony that only forty per cent of the entire work was done, when in truth the testimony shows that about forty per cent on some remaining doors at the factory as to work was done; and excepts to the failure to allow for 11 window frames delivered in the Bank which were store front window frames of a very large and expensive pattern approximating in value about \$1100, which is included in the \$1957, known as the Bank contract, and for the failure to allow anything for the balance of said contract all of which was completed and ready for delivery and tender for which was made under the evidence long prior to appointment of receiver and prior to failure of said Building Company; and further excepts to the failure of the Court to find in favor of the Mill Work Company as to Exhibit "E," amounting to \$200, 80 pieces of scaffold bucks which were delivered at the building prior to December 7th, 1920. [343]

### XIV.

The Mill Work & Supply Company further ex-

cepts to the findings in that they do not give a lien in full for all material finished and practically finished and held at the warehouse at the instigation of the Building Company, and for the further reason that tender was made not only to the Building Company by the receiver and to this Court unqualifiedly of this material, but an offer was made in open court that this Court might by a simple order affix the title of all this material in the Building Company for the receiver.

FLICK & PAUL,  
Attorneys for Lien Claimant Tacoma Mill Work &  
Supply Company.

Exceptions allowed.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Apr. 7, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [344]

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**Decree.**

This cause having come on regularly to be heard upon the bill of complaint heretofore filed in the above-entitled cause, and the exhibits attached thereto, and upon the several answers to the said bill of complaint filed herein by the several defendants, and upon the several cross-complaints of the defendants, and upon the several orders, papers and proceedings entered or filed in this cause, and upon



the evidence and testimony heard in open court, the complainant McClintic-Marshall Company appearing by their solicitors, Hayden, Langhorne & Metzger, and the defendant Scandinavian-American Building Company appearing by Forbes P. Haskell as receiver and by his solicitors Guy E. Kelly, Thomas MacMahon and Frank D. Oakley, and the defendants Scandinavian-American Bank of Tacoma, Washington, and John P. Duke as Supervisor of Banks of the State of Washington and as successor in office to the defendant Claude P. Hay as State Bank Commissioner for the State of Washington, appearing by their solicitors Frank D. Oakley, Guy E. Kelly and Thomas MacMahon, and the defendant Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company, appearing by their solicitors Flick & Paul, the defendant Savage-Scotfield Company, a corporation, appearing by its solicitors Fitch & Arntson, the defendant Puget Sound Iron & Steel Works, a corporation, appearing by its solicitors [345] Bates & Peterson, the defendant E. E. Davis & Company, a corporation, appearing by its solicitor James W. Reynolds, the defendant St. Paul & Tacoma Lumber Company, a corporation, appearing by its solicitor H. S. Griggs, the defendant Far West Clay Company, a corporation, appearing by its solicitor R. S. Holt, and the



defendants Henry Mohr Hardware Company, Inc., a corporation, and Hunt & Mottet, a corporation, appearing by their solicitor W. W. Keyes, and the defendant Edward Miller Cornice & Roofing Company, a corporation, appearing by its solicitor Walter M. Harvey, and the defendant Washington Brick Lime & Sewer Pipe Company, a corporation, appearing by its solicitors Charles P. Lund and Davis & Neal, and the defendant Otis Elevator Company, a corporation, appearing by its solicitors Bogle, Merritt & Bogle, and the defendant Colby Star Manufacturing Company appearing by its solicitors Grosseup & Morrow, and the defendant Crane Company, a corporation, appearing by its solicitor Walter S. Fulton, and the defendant Ben Olson Company, a corporation, appearing by its solicitors Stiles & Latcham, and the defendant H. C. Greene, doing business as H. C. Greene Iron Works, appearing by his solicitor H. A. P. Meyers, and the defendants Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company, appearing by their solicitor E. N. Eisenhower, and the defendants H. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency, appearing by their solicitors Burkey, O'Brien & Burkey, and the defendant J. D. Mullins, doing business under the firm name [346] and style of J. D. Mullins Bros., appearing by his solicitors Teats, Teats & Teats, and the defendants S. J. Pritchard, C. H. Graves and Emma Graves, copartners doing business under the firm name and

style of P. & G. Lumber Company, appearing by their solicitors Grosscup & Morrow, and the defendant Morris Kleiner, doing business as Liberty Lumber & Fuel Company, appearing by his solicitor Louis Muscek, and the defendants N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short and George W. Hicks, appearing by their solicitors Charles Bedford, and the defendant Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal, appearing by their solicitor L. R. Bonneville, and the defendant F. R. Schoen appearing by his solicitor DeWitt M. Evans, and the defendant C. H. Boedecker and William L. Owen, appearing by their solicitor S. E. McAnally, and the defendant F. H. Godfrey appearing by his solicitors Stiles & Latcham, and the defendant W. E. Morris appearing by his solicitors Hartman & Hartman, and the said cause having been fully argued by counsel for said respective parties, and the Court having taken same under advisement and having fully considered [347] the entire record in said cause and the arguments of

counsel, and being fully advised in all and singular the premises herein.

DOETH NOW ORDER, ADJUDGE AND DECREE AS FOLLOWS:

I.

That this Court has jurisdiction of all of the parties to this cause, and of the subject matters therein involved; that McClintic-Marshall Company, the complainant herein, at the time of the commencement of this suit was and now is a corporation created and existing under and by virtue of the laws of the State of Pennsylvania, and at the time of the commencement of this suit was and now is a citizen and resident of the State of Pennsylvania, and that the defendants Scandinavian-American Building Company, Scandinavian-American Bank of Tacoma, Washington, Savage-Scofield Company, Puget Sound Iron & Steel Works, E. E. Davis & Company, St. Paul & Tacoma Lumber Company, Far West Clay Company, Henry Mohr Hardware Company, Inc., Hunt & Mottet, Edward Miller Cornice & Roofing Company, Washington Brick, Lime & Sewer Pipe Company, Colby Star Manufacturing Company, Ben Olson Company, at the time of the commencement of this suit were and now are and each of them then was and now is a corporation created and existing under and by virtue of the laws of the State of Washington, and at the time of the commencement of this suit they and each of them were and they now are citizens and residents of the State of Washington; that the defendant Crane Company at the time of the commencement

of this suit was and now is a corporation organized and existing under and by virtue of the laws of the State of [348] Illinois, and at the time of the commencement of this suit was and now is a citizen and resident of the State of Illinois; that the defendant Otis Elevator Company at the time of the commencement of this suit was and now is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and at the time of the commencement of this suit was and now is a citizen and resident of the State of New York, having its principal place of business in the city of New York and State of New York; that the defendant Hattie Davis Tennant at the time of the commencement of this suit was and now is a resident and citizen of the State of California; and that each and all of the remaining individual defendants at the time of the commencement of this suit were and now are residents and citizens of the State of Washington; that the defendants R. T. Davis, Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, were at the time of the commencement of this suit and now are copartners doing business under the name and style of Tacoma Millwork Supply Company; that the defendant Claude P. Hay was, at the time of the commencement of this suit, State Bank Commissioner for the State of Washington, but has been succeeded in office by John P. Duke, who is now the Supervisor of Banks of the State of Washington, and

succeeded to all of the rights, powers and authorities of the defendant Claude P. Hay as State Bank Commissioner; that the defendant Forbes P. Haskell, at the time of the commencement of this suit was and now is Deputy State Bank Commissioner for the State of Washington, in charge of the liquidation of the affairs of the Scandinavian-American [349] Bank of Tacoma, Washington, and that said Forbes P. Haskell was, by order of this Court during the pendency of this suit, appointed Receiver of the property and assets of the defendant Scandinavian-American Building Company, a corporation, and is now the duly qualified and acting Receiver of the property and assets of said defendant corporation; that the defendant H. C. Greene was at the time of the commencement of this suit and now is doing business under the firm name and style of H. C. Greene Iron Works; that the defendants Carl Gebbers and Fred S. Haines were at the time of the commencement of this action, and now are, copartners doing business under the firm name and style of Ajax Electric Company; that the defendant H. O. Matthews and Frank L. Johns were at the time of the commencement of this action and now are copartners doing business under the firm name and style of City Lumber Agency; that the defendant J. D. Mullins, at the time of the commencement of this suit was and now is doing business as J. D. Mullins Bros.; that the defendants S. J. Pritchard, C. H. Graves and Emma Graves were at the time of the commencement of this action and now are, copartners doing



business under the firm name and style of P. & G. Lumber Company; that the defendant Morris Kleiner was at the time of the commencement of this action and now is doing business under the firm name and style of Liberty Lumber & Fuel Company; that the defendant Theodore Hedlund was at the time of the commencement of this suit and now is doing business under the firm name and style of Atlas Paint Company; and that the [350] defendants Robert M. Davis and Frank C. Neal were at the time of the commencement of this suit and now are copartners doing business under the firm name and style of Davis & Neal; that this suit was so commenced to enforce a legal or equitable lien or claim to real property located within the Western District of Washington and the Southern Division thereof, and that all the material allegations of the bill of complaint herein relating to the matters affecting the jurisdiction of this court, are true, and that the value of the matter in dispute in this cause exceeds the sum of \$3,000, exclusive of interest and costs.

## II.

That the defendants United States Machine & Engineering Company, a corporation, Tacoma Shipbuilding Company, a corporation, Sherman Wells, Carl J. Gerringer, George Gerringer, A. W. Aufang, and J. A. Soderberg, doing business as West Coast Monumental Company, were each of them duly and regularly served with subpoenas issued in this cause after the filing of the complaint herein, and stipulated and agreed to appear in this suit



within twenty days after the service upon them of a copy of the supplemental and amended complaint of the complainant, but failed so to do, and that an order taking the said bill *pro confesso* against said defendants and each of them was duly entered on the — day of October, 1921, and that no proceedings have been had or taken by said defendants or any of them since the entry of said order, and that more than thirty days have elapsed since the entry of said order; and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as to said defendants that they have not, nor has any of them, any right, title, estate or interest whatsoever in and to the real [351] property hereinafter described, and that as to said defendants the complainant is entitled to the relief prayed for in its amended and supplemental bill of complaint.

### III.

That at the time of the commencement of this suit defendant Scandinavian-American Building Company was and now is the owner of the following described real property situate in Pierce County, Washington, and within the Western District of Washington, Southern Division, and more particularly described as follows:

Lots ten (10), eleven (11) and twelve (12), in Block ten hundred three (1003), as the same are shown and designated upon a certain plat entitled, "Map of New Tacoma, W. T.," which was filed for record in the office of the Auditor

of Pierce County, Washington Territory, February 3, 1875,

together with all the hereditaments and appurtenances thereto belonging, and the rents, issues and profits therefrom arising or in any manner appertaining.

#### IV.

That heretofore and within one year prior to January 15, 1921, the defendants in this paragraph named, performed labor for and at the instance of the defendant Scandinavian-American Building Company upon its building located upon the real property hereinabove described, of the reasonable value and amount set opposite their respective names following, to wit:

|                        |         |
|------------------------|---------|
| N. A. Hansen.....      | \$59.90 |
| A. J. Van Buskirk..... | 59.90   |
| C. W. Crouse .....     | 49.92   |
| F. L. Swain.....       | 59.90   |
| D. A. Trolson.....     | 59.90   |
| Fred Gustafson.....    | 59.90   |
| E. Scheibal .....      | 59.90   |
| Paul Scheibal .....    | 59.90   |
| F. J. Kazda .....      | 59.90   |
| W. Donnellan .....     | 59.90   |
| P. Hagstrom .....      | 54.90   |

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|                      |       |
|----------------------|-------|
| Arthur Purvis .....  | 59.90 |
| Roy Farnsworth ..... | 59.90 |
| C. B. Dustin .....   | 59.90 |
| L. J. Pettifer.....  | 59.90 |
| Charles Bond .....   | 59.90 |

|                        |       |
|------------------------|-------|
| L. H. Broten.....      | 59.90 |
| W. Canaday .....       | 49.92 |
| L. R. Lilly .....      | 59.90 |
| F. McNair .....        | 59.90 |
| Dave Shields .....     | 59.90 |
| Ed Lindberg .....      | 44.53 |
| Joe Tikalsky .....     | 48.88 |
| F. Mente .....         | 44.13 |
| C. Gustafson .....     | 38.89 |
| George Larson .....    | 44.13 |
| F. Marcellino .....    | 30.66 |
| M. Swanson .....       | 24.23 |
| William Griswold ..... | 41.88 |
| C. E. Olson.....       | 58.38 |
| C. I. Hill.....        | 8.97  |
| Emil Johnson .....     | 6.98  |
| C. Peterson .....      | 41.88 |
| F. A. Fetterly.....    | 42.63 |
| Earl Whitford .....    | 44.13 |
| Thomas S. Short.....   | 59.90 |
| George W. Hicks.....   | 41.88 |

and that by reason thereof there became due and owing to said defendants and to each of them from the defendant Scandinavian-American Building Company, the amount specified, and each of said defendants is hereby awarded and decreed a judgment against the defendant Scandinavian-American Building Company for the amount specified, with interest at six per cent per annum from January 15, 1921, until paid, and for their costs and disbursements taxed in the sum of \$10.00, and that the said defendants and each of them, within ninety

days after the cessation of the labor performed by them upon the real property herein described executed and caused to be filed in the office of the Auditor of Pierce County, Washington, a due and proper notice of claim of lien, and thereafter, within the time prescribed by the laws of the State of Washington, commenced suit in this court and cause to establish and foreclose their said claims of lien, and that in said [353] proceeding they were obliged to and did employ an attorney and solicitor, the reasonable value of whose services is decreed to be \$925.00, and that said defendants and each of them have a valid and subsisting labor lien upon the real premises hereinabove described, to secure the payment of the several sums for which judgment is here rendered in their favor and against the Scandinavian-American Building Company, and also to secure an attorney's fee of \$25 for each lien, aggregating a total attorney's fee of \$925.

## V.

That heretofore and within one year prior to January 15, 1921, the individuals in this paragraph named performed labor for and at the instance of the defendant Scandinavian-American Building Company upon its building upon the real property hereinabove described, of the reasonable value and amount set opposite their respective names, to wit:

|                     |         |
|---------------------|---------|
| A. E. Smith.....    | \$41.88 |
| J. H. Ehret.....    | 11.97   |
| John Gallagher .... | 8.97    |
| Pat Keenan .....    | 54.13   |
| H. R. Doremus.....  | 41.88   |

|                        |       |
|------------------------|-------|
| R. Davey .....         | 41.88 |
| L. A. Williams .....   | 11.97 |
| Davis Bain .....       | 41.88 |
| P. J. Bergsten .....   | 17.45 |
| Charles Nichols .....  | 10.10 |
| E. H. Geister.....     | 11.91 |
| Roy Hix .....          | 55.88 |
| Fred Denham .....      | 55.88 |
| Harry R. Pitcher ..... | 51.88 |
| John Blixt .....       | 55.88 |
| John Hampson .....     | 41.88 |
| J. S. Kelly .....      | 35.90 |
| C. A. Anderson.....    | 11.97 |
| L. J. Hunt.....        | 46.39 |
| B. F. Wells.....       | 11.97 |
| C. Colburn .....       | 9.35  |
| Robert Comar .....     | 41.88 |
| J. P. Brislin .....    | 54.89 |
| Erich Holmer .....     | 42.26 |
| John Lentz .....       | 8.97  |
| J. M. Collins.....     | 38.89 |
| W. S. Snyder.....      | 58.21 |

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|                     |       |
|---------------------|-------|
| C. O. Bodun.....    | 9.72  |
| W. Tabor .....      | 49.38 |
| M. P. Jones.....    | 8.97  |
| Dan Haley .....     | 35.90 |
| Henry Poff .....    | 8.97  |
| C. A. Carlson ..... | 51.88 |
| H. Simons .....     | 55.88 |
| Bert Morton .....   | 8.97  |
| H. J. Ramsey.....   | 55.88 |

|                        |        |
|------------------------|--------|
| W. P. Wells.....       | 55.88  |
| J. H. Calhoun.....     | 11.97  |
| Ed Hobson .....        | 13.47  |
| H. L. Morris.....      | 55.88  |
| Andrew Bratten .....   | 56.88  |
| D. E. Kenan.....       | 11.97  |
| W. K. Herendeen.....   | 8.97   |
| F. H. Madsen.....      | 95.34  |
| Roger E. Chase .....   | 107.25 |
| David L. Glenn.....    | 18.00  |
| W. M. House.....       | 47.89  |
| S. Rounsley .....      | 41.88  |
| I. Lerass .....        | 49.38  |
| J. M. Kryci .....      | 55.88  |
| A. Johnson .....       | 41.88  |
| F. N. Bergen.....      | 41.88  |
| C. Olsen .....         | 41.89  |
| Samuel Rothstein ..... | 13.33  |

and that thereafter and within ninety days after the cessation of the performance of said labor, said individuals and each of them executed and caused to be filed in the office of the Auditor of Pierce County, Washington, a proper notice of their claim of lien upon said real property for the value of the labor thus performed, and thereafter, for a valuable consideration they and each of them duly assigned all their claims against the defendant Scandinavian-American Building Company, including their several and respective claims of lien upon the real property in said claims specified, and hereinabove described, to the defendants Robert M. Davis and Frank C. Neal, copartners as Davis &



Neal, and that said defendants Robert M. Davis and Frank C. Neal, within the time limited by the laws of the State of Washington, commenced in this court and cause an action to establish and foreclose said claims of lien and that by reason thereof said defendants Robert M. Davis and [355] Frank C. Neal be and they are hereby decreed to have and recover judgment against the defendant Scandinavian-American Building Company for the aggregate sum of \$1,971.27, together with interest amount to \$140.45, and for the further sum of \$14.80 expense incurred in the filing of said claims of lien, and for an attorney's fee of \$1,000 which is decreed to be a reasonable attorney's fee, and for their costs taxed herein in the sum of \$7.00, and that said defendants Robert M. Davis and Frank C. Neal, copartners as Davis & Neal, have a valid and subsisting labor lien upon the real property hereinabove described, to secure the payment of all sums for which judgment is hereby decreed in their favor.

VI.

That within one year prior to January 15, 1921, the defendant F. H. Godfrey performed labor for and at the instance of the defendant Scandinavian-American Building Company upon its building situate upon the real property hereinabove described, of the reasonable value of \$750, and thereafter and within ninety days after the cessation of the performance of said labor, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said

defendant Scandinavian-American Building Company, and said real property, and thereafter and within the time limited by the statutes of the State of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said defendant F. H. Godfrey be and he is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$750, together with interest amounting to \$57.87, and for an attorney's fee of \$125, which is [356] expressly decreed to be reasonable, and for his costs and disbursements taxed herein in the sum of \$10.00; and further that said defendant F. H. Godfrey has a valid and subsisting labor lien upon the real property hereinabove described, to secure the payment of all sums for which he is hereby awarded a judgment.

#### VII.

That within one year prior to January 15, 1921, the defendant W. L. Owens performed labor for and at the instance of the defendant Scandinavian-American Building Company upon its building situate upon the real property hereinabove described, of the reasonable value of \$11.95, and thereafter and within ninety days after the cessation of the performance of said labor, executed and cause to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building Company, and said real property, and thereafter and within the time limited by the statutes of the State of Washington, commenced suit

in this court and cause to establish and foreclose said lien, and that by reason thereof said defendant W. L. Owens be and he is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$11.95, together with interest amount to 85 cents, without any attorney's fee, the same being waived, and for his costs and disbursements taxed herein in the sum of \$1.00; and further that the said defendant W. L. Owens has a valid and subsisting labor lien upon the real property hereinabove described, to secure the payment of all sums for which he is hereby awarded a judgment. [357]

VIII.

That within one year prior to January 15, 1921, the defendant C. H. Boedecker performed labor for and at the instance of the defendant Scandinavian-American Building Company upon its building situate upon the real property hereinabove described, of the reasonable value of \$5.95, and thereafter and within ninety days after the cessation of the performance of said labor, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building Company, and said real property, and thereafter and within the time limited by the statutes of the State of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said defendant C. H. Boedecker be and he is hereby decreed to have and recover judgment against the Scandinavian-

American Building Company in the sum of \$5.95, together with fifty cents expended for the filing of his claim of lien, and interest amount to 42 cents, without any attorney's fee, the same being waived, and for his costs and disbursements taxed herein in the sum of \$nil; and further that the said defendant C. H. Boedecker has a valid and subsisting labor lien upon the real property hereinabove described, to secure the payment of all sums for which he is hereby awarded a judgment.

#### IX.

That within one year prior to January 15, 1921, the defendant F. R. Schoen performed labor for and at the instance of the defendant Scandinavian-American Building Company upon its building situate upon the real property hereinabove described, of the reasonable value of \$198, and [358] likewise furnished material to and at the instance of the defendant Scandinavian-American Building Company to be used in the construction of its said building, of the reasonable value and amount of \$10.80, and thereafter and within ninety days after the cessation of the performance of said labor and the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of his claim of lien for said labor and material against said defendant Scandinavian-American Building Company and upon said real property, and thereafter and within the time limited by the statutes of the State of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that

by reason thereof said defendant F. R. Schoen be and he is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$208.80, together with interest amount to \$16.04, and for an attorney's fee of \$40, which is expressly decreed to be reasonable, and for his costs and disbursements taxed herein in the sum of \$10.00, and further that the said F. R. Schoen has a valid and subsisting labor lien upon the real property hereinabove described to secure the payment of said sum of \$198, and interest as above provided, and the attorney's fee of \$40, and his costs, and likewise has a valid and subsisting materialman's lien upon said property to secure the payment of the sum of \$10.80 and interest as hereinbefore provided.

X.

That within one year prior to January 15, 1921, the defendant Puget Sound Iron & Steel Works, at the instance of defendant E. E. Davis & Company, furnished to the defendant [359] Scandinavian-American Building Company material to be used in the construction of said defendant's building situate upon the real property hereinabove described, of the reasonable value and amount of \$495.90 and thereafter and within ninety days after the cessation of the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building Company, and said real property, and thereafter and within the time limited



by the statutes of the State of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said defendant Puget Sound Iron & Steel Works be and it is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$495.90, together with interest amount to \$44.63, and for an attorney's fee of \$100, which is expressly decreed to be reasonable, and for its costs and disbursements taxed herein in the sum of \$5.00; and further; that said defendant Puget Sound Iron & Steel Works has a valid and subsisting materialman's lien upon the real property hereinabove described to secure the payment of all sums for which it is hereby awarded a judgment.

#### XI.

That within one year prior to January 15, 1921, the defendant H. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency, furnished to and at the instance of the defendant Scandinavian-American Building Company, material to be used in the construction of said defendant's building situate upon [360] the real property hereinabove described, of the reasonable value and amount of \$708.54, and thereafter and within ninety days after the cessation of the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building Company, and said real property, and thereafter and within the time limited



by the statutes of the State of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said defendants H. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency, be and they are hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$708.54, together with interest amounting to \$52.55, and for an attorney's fee of \$125, which is expressly decreed to be reasonable, and for their costs and disbursements taxed herein in the sum of \$5.00; and further, that said defendant H. O. Matthews and Frank L. Johns have a valid and subsisting materialman's lien upon the real property hereinabove described to secure the payment of all sums for which they are hereby awarded a judgment.

## XII.

That within one year prior to January 15, 1921, the defendant St. Paul & Tacoma Lumber Company furnished to and at the instance of the defendant Scandinavian-American Building Company, material to be used in the construction of said defendant's building situate upon the real property hereinabove described, of the reasonable value and amount of \$708.33, and thereafter and within ninety days after the cessation of the furnishing of said material, executed and caused to [361] be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building Com-

pany, and said real property, and thereafter and within the time limited by the statutes of the State of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said defendant St. Paul & Tacoma Lumber Company be and it is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$708.33, together with interest amounting to \$54.65, and for an attorney's fee of \$125, which is expressly decreed to be reasonable, and for its costs and disbursements taxed herein in the sum of \$7.00; and further, that said defendant St. Paul & Tacoma Lumber Company has a valid and subsisting Materialman's lien upon the real property hereinabove described to secure the payment of all sums for which it is hereby awarded a judgment.

### XIII.

That within one year prior to January 15, 1921, the defendant Savage-Scofield Company furnished to and at the instance of the defendant Scandinavian-American Building Company material to be used in the construction of said defendant's building situate upon the real property hereinabove described, of the reasonable value and amount of \$9342.25, and thereafter and within ninety days after the cessation of the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of the claim of lien against said defendant Scandinavian-American Building Company, and said real property, [362] and thereafter and with-

in the time limited by the statutes of the State of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said defendant Savage-Scotfield Company be and it is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$9342.25, together with interest amounting to \$675.76, and for an attorney's fee of \$350, which is expressly decreed to be reasonable, and for its costs and disbursements taxed herein in the sum of \$10.00; and further, that said defendant Savage-Scotfield Company has a valid and subsisting materialman's lien upon the real property hereinabove described to secure the payment of all sums for which it is hereby awarded a judgment.

XIV.

That within one year prior to January 15, 1921, the defendant Henry Mohr Hardware Company, Inc., furnished to and at the instance of the defendant Scandinavian-American Building Company material to be used in the construction of said defendant's building situate upon the real property hereinabove described, of the reasonable value and amount of \$36.84, and thereafter and within ninety days after the cessation of the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building Company and said real property, and thereafter and within the time limited by the statutes of the State of Washington, commenced suit in this court and cause to establish and

foreclose said lien, and that by reason thereof said defendant Henry Mohr Hardware [363] Company, Inc., be and it is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$36.84, together with interest amounting to \$286, and for an attorney's fee of \$25, which is expressly decreed to be reasonable, and for its costs and disbursements taxed herein in the sum of \$5.00; and further, that said defendant Henry Mohr Hardware Company, Inc., has a valid and subsisting materialman's lien upon the real property hereinabove described to secure the payment of all sums for which it is hereby awarded a judgment.

#### XV.

That within one year prior to January 15, 1921, the defendant Far West Clay Company furnished to and at the instance of the defendant Scandinavian-American Building Company, material to be used in the construction of said defendant's building situate upon the real property hereinabove described, of the reasonable value and amount of \$22,165.34, and thereafter and within ninety days after the cessation of the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien, against said defendant Scandinavian-American Building Company, and said real property, and thereafter and within the time limited by the statutes of the State of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof

said defendant Far West Clay Company be and it is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$22,165.34, together with interest amounting to \$1678.64, and for an attorney's fee of \$2500, which is expressly decreed to be reasonable, [364] and in accordance with said defendant's motion to amend its cross-complaint, which motion is hereby granted, and for its costs and disbursements taxed herein in the sum of \$31.20; and further, that said defendant Far West Clay Company has a valid and subsisting materialman's lien upon the real property hereinabove described to secure the payment of all sums for which it is hereby awarded a judgment.

XVI.

That within one year prior to January 15, 1921, the defendants S. J. Pritchard, C. H. Graves and Emma Graves, copartners doing business under the firm name and style of P. & G. Lumber Company, furnished to and at the instance of the defendant Scandinavian-American Building Company, material to be used in the construction of said defendant's building situate upon the real property hereinabove described, of the reasonable value and amount of \$40.80, and thereafter and within ninety days after the cessation of the furnishing of said material, executed and caused to be filed in the office of the auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building Company, and said real property, and thereafter and within the time



limited by the statutes of the state of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said defendants S. J. Pritchard, C. H. Graves and Emma Graves be and they are hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$40.80, together with interest amounting to \$3.47, and for an attorney's fee of \$25, which is [365] expressly decreed to be reasonable, and for their costs and disbursements taxed herein in the sum of \$5.00; and further, that said defendants S. J. Pritchard, C. H. Graves and Emma Graves have a valid and subsisting materialman's lien upon the real property hereinabove described to secure the payment of all sums for which they are hereby awarded a judgment.

#### XVII.

That within one year prior to January 15, 1921, the defendant Crane Company furnished at the instance of defendant Ben Olson Company to the defendant Scandinavian-American Building Company material to be used in the construction of said defendant's building situate upon the real property hereinabove described, of the reasonable value and amount of \$16,047.03, giving due notice of the commencement of such furnishing, and thereafter and within ninety days after the cessation of the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building



Company, and said real property, and thereafter and within the time limited by the statutes of the state of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said defendant Crane Company be and it is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$16,047.03, together with interest amounting to \$1238.29, and for an attorney's fee of \$2,000 which is expressly decreed to be reasonable, and for its costs and disbursements taxed herein in the sum of \$10 and [366] further, that said defendant Crane Company has a valid and subsisting materialman's lien upon the real property hereinabove described to secure the payment of all sums for which it is hereby awarded a judgment.

#### XVIII.

That within one year prior to January 15, 1921, the defendant Colby Star Manufacturing Company furnished to and at the instance of the defendant Scandinavian-American Building Company material to be used in the construction of said defendant's building situate upon the real property hereinabove described, of the reasonable value and amount of \$1770.12, and thereafter, and within ninety days after the cessation of the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building Company, and said real property, and thereafter and within

the time limited by the statutes of the state of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that upon the trial of said cause asked leave to amend its lien and cross-complaint herein to include the material aggregating the said value of \$1770.12, and that said motion is granted and said amendment allowed, and that by reason thereof said defendant Colby Star Manufacturing Company be and it is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$1770.12, together with interest amounting to \$136.59, and for attorney's fee of \$174, which is expressly decreed to be reasonable, and for its costs and disbursements taxed herein in the sum of \$10, and further, that said defendant Colby Star [367] Manufacturing Company has a valid and subsisting materialman's lien upon the real property hereinabove described to secure the payment of all sums for which it is hereby awarded a judgment.

#### XIX.

That within one year prior to January 15, 1921, the defendant Hunt & Mottet furnished to the defendant Scandinavian-American Building Company material to be used in the construction of said defendant's building situate upon the real property hereinabove described, of the reasonable value and amount of \$462.25, of which material to the value of \$111 was furnished at the instance of defendant E. E. Davis & Company, and thereafter and within ninety days after the cessation of the furnishing of said material, executed and caused to be

filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building Company and said real property, and thereafter and within the time limited by the statutes of the state of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said defendant Hunt & Mottet be and it is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$462.25, together with interest amounting to \$35.74, and for an attorney's fee of \$100, which is expressly decreed to be reasonable, and for its costs and disbursements taxed herein in the sum of \$5 and further, that said defendant Hunt & Mottet has a valid and subsisting materialman's lien upon the real property hereinabove described to secure the payment of all sums for which it is hereby awarded a judgment. [368]

That the defendant E. E. Davis & Company is primarily liable to the defendant Hunt & Mottet for the payment of \$111.75, and that upon the payment to the defendant Hunt & Mottet of the judgment hereby rendered in its favor by or on behalf of the defendant Scandinavian-American Building Company or by the application of the proceeds of the sale hereinafter ordered, the judgment hereinafter decreed in favor of the said defendant E. E. Davis & Company against Scandinavian-American Building Company shall be reduced and satisfied to the extent of said \$111.75.

## XX.

That within one year prior to January 15, 1921, the complainant McClintic-Marshall Company furnished to and for the defendant Scandinavian-American Building Company, and at its instance, material to be used in the construction of said defendant's building situate upon the real property hereinabove described, of the reasonable value of \$176,632.37, and thereafter and within ninety days after the cessation of the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County a due and proper notice of its claim of lien against said defendant Scandinavian-American Building Company and said real property, and thereafter and within the time limited by the statutes of the state of Washington, commenced suit in this court and cause to establish and foreclose said lien. That the defendant Scandinavian-American Building Company was damaged by reason of defects in the sum of \$2000, but sustained no other damages on account of the acts or omissions of the complainant or which are chargeable against the complainant, and that by reason thereof, complainant [369] McClintic-Marshall Company be and it is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$174,632.37 and interest amounting to \$16,180.46, and for an attorney's fee of \$12,500, which is expressly decreed to be reasonable, and for its costs and disbursements taxed herein in the sum of \$287.82; and further, that said complainant

McClintic-Marshall Company has a valid and subsisting materialman's lien upon the real property hereinabove described to secure the payment of all sums for which it is hereby awarded judgment.

XXI.

That within one year prior to January 15, 1921, the defendant J. D. Mullins, doing business as J. D. Mullins Bros., under a contract with the defendant Scandinavian-American Building Company for the furnishing and installing of certain electrical equipment and appliances, did furnish certain material to be used in the construction of said defendant's building upon the real property hereinabove described, and furnished labor in the installation thereof of the reasonable value and amount of \$319.08, and thereafter and within ninety days after the cessation of the performance of said labor and the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building Company and said real property, and thereafter and within the time limited by the statutes of the state of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said [370] defendant J. D. Mullins be and he is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$319.08, together with interest amounting to \$25.15, and for an attorney's fee of \$30, which is expressly



decreed to be reasonable, and for its costs and disbursements taxed herein in the sum of \$5 and further that said defendant J. D. Mullins has a valid and subsisting contractor's lien upon the real property hereinabove described to secure the payment of all sums for which it is hereby awarded a judgment.

### XXII.

That the defendants Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company, do have and recover judgment against the Scandinavian-American Building Company in the sum of \$203.70, and interest amounting to \$16.22, and that of said amount of \$153.09, is the reasonable value of materials furnished and of labor furnished in the installation of said material by said defendants to the Scandinavian-American Building Company under a contract between the defendant Carl Gebbers and Fred S. Haines and the defendant Scandinavian-American Building Company for the furnishing and installing of certain electrical equipment and appliances upon the building of said defendant company situate upon the real property hereinabove described, and that within ninety days after the cessation of the performance of said labor and the furnishing of said material, said defendants Gebbers and Haines executed and caused to be filed in the office of the Auditor of Pierce County a due and proper notice of claim of lien against said defendant Scandinavian-American Building Company and said real property and thereafter and [371]



within the time limited by the statutes of the state of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said defendant Carl Gebbers and Fred S. Haines be and they are hereby decreed to have a valid and subsisting contractor's lien upon the real property hereinabove described to secure the payment of said sum of \$153.09, together with interest amounting to \$12.19, and for an attorney's fee of \$40 which is expressly decreed to be reasonable and for their costs and disbursements taxed herein in the sum of \$5.00.

XXIII.

That the defendant H. C. Greene doing business under the firm name and style of H. C. Greene Iron Works do have and recover judgment against the Scandinavian-American Building Company in the sum of \$4656.88, together with interest thereon amounting to \$349.26, and for his costs and disbursements taxed at \$5.00. That of said amount \$109.35, is the reasonable value of material furnished by said defendant to and at the instance of the Scandinavian-American Building Company to be used in the construction of the building of said defendant upon the real property hereinabove described, over and above all just credits and offsets whatsoever. That of said amount of \$4656.88, \$750 is the fair and reasonable value of material furnished and of labor furnished in the installation thereof to the defendant Scandinavian-American Building Company to be used in the construction of said building under an agreement between the

said defendant H. C. Greene and the defendant Scandinavian-American Building Company for the furnishing and installing of a flag-pole, and that of said amount of \$4656.88, \$197.38 is the [372] reasonable value of material furnished and of labor furnished in the installation thereof, to the defendant Scandinavian-American Building Company to be used in the construction of said building upon said real property under an agreement between the defendant H. C. Greene and the defendant Scandinavian-American Building Company for the furnishing and installing of certain elevator cells and furnishings, and that within ninety days after the cessation of the performance of said labor and the furnishing of said material the defendant H. C. Greene executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of his claim of lien for said labor and material against said defendant Scandinavian-American Building Company and upon said real property, and thereafter and within the time limited by the statutes of the state of Washington commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said defendant H. C. Greene is hereby decreed to have a valid and subsisting materialman's lien upon the real property hereinabove described to secure the payment of \$109.35, with interest amounting to \$8.20, and its proportional part of \$150 which is hereby decreed to be a reasonable attorney's fee for the foreclosure of said defendant's lien, and is further decreed to have a valid and subsisting contractor's

lien upon the real property hereinabove described to secure the payment of said sums of \$750 and \$197.38, with interest amounting to \$71.05, and for their proportional part of the attorney's fee hereinbefore allowed, and also to secure the payment of the costs taxed herein. [373]

XXIV.

That within one year prior to January 15, 1921, the defendant E. E. Davis & Company under an agreement with the defendant Scandinavian-American Building Company for the erection and painting of the structural steel called for and required in said Scandinavian-American Building Company's building, and furnished material to be used in the construction of said defendant's building upon the real property hereinabove described, and furnished labor in the installation thereof of the reasonable value and amount of \$30,343.69, and thereafter and within ninety days after the cessation of the performance of said labor and the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building Company, and said real property, and thereafter and within the time limited by the statutes of the state of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof, said defendant E. E. Davis & Company be and it is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$30,343.69, together with inter-

est amounting to \$2341.52, and for an attorney's fee of \$3500, which is expressly decreed to be reasonable, and for its costs and disbursements taxed herein in the sum of \$5.00, and further that said defendant E. E. Davis & Company has a valid and subsisting contractor's lien upon the real property hereinabove described to secure the payment of all sums for which it is hereby awarded a judgment. And further that said defendant E. E. Davis & Company is primarily liable for the payment of the sums for which the defendant Puget Sound Iron & Steel Works is hereinbefore decreed to be entitled to a [374] lien, and is likewise primarily responsible for \$111.75 of the sum for which the defendant Hunt & Mottet is hereinbefore decreed to be entitled to a lien, and that upon the payment by the defendant Scandinavian-American Building Company to said defendants Puget Sound Iron & Steel Works and Hunt & Mottet of said amounts, or upon the payment of said amounts by the application of the proceeds of the sale hereinafter ordered, the judgment and decree hereby rendered in favor of the defendant E. E. Davis & Company and its lien therefor shall be correspondingly reduced.

XXV.

That within one year prior to January 15, 1921, the defendant Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name

and style of Tacoma Millwork Supply Company, procured and prepared certain material for delivery to the defendant Scandinavian-American Building Company, under a contract with said defendant for the furnishing of material for said building, and that because of the breach of said contract by defendant Scandinavian-American Building Company the said defendants doing business as Tacoma Millwork Supply Company were damaged in the sum of \$52,799.33, and they are hereby decreed to have and recover judgment against the defendant Scandinavian-American Building Company in said sum of \$52,799.33, together with interest amounting to \$4,206.34, and for their costs and disbursements taxed in the sum of \$10, and that said defendants under said contract, furnished to and at the instance of the defendant Scandinavian-American Building [375] Company material of the reasonable value of \$4657.50 over and above all just credits and offsets whatsoever, to be used in the construction of said defendant Scandinavian-American Building Company's building situate upon the real property hereinabove described, and thereafter and within ninety days after the cessation of the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building Company and said real property, and thereafter and within the time limited by the statutes of the State of Washington, commenced suit in this court and cause to establish and foreclose



said lien, and that by reason thereof said defendants doing business as Tacoma Millwork Supply Company be and they are hereby decreed to have a valid and subsisting materialman's lien upon the real property hereinabove described to secure the payment of said sum of \$4657.50, together with an attorney's fee of \$500 which is hereby expressly decreed to be reasonable, and interest amounting to \$360.22, and that said defendants further performed certain labor for the defendant Scandinavian-American Building Company under a contract with said defendant Scandinavian-American Building Company for the installing and putting in place of the material to be furnished by them. That said labor was performed not upon the building situate upon the premises hereinabove described, but at the shops of the defendants doing business as Tacoma Millwork Supply Company and was of the reasonable value and amount of \$6,043, and that by reason thereof and because of the breach of said contract by the defendant Scandinavian-American Building Company, said [376] defendant doing business as Tacoma Millwork Supply Company be and they are hereby decreed to have and recover judgment from the defendant Scandinavian-American Building Company in the sum of \$6,043, together with interest amounting to \$466.32.

## XXVI.

That heretofore and on or about the 27th day of February, 1920, the defendant Ben Olson Company entered into a contract with the defendant Scandinavian-American Building Company for the furnish-



ing and installing of certain plumbing, heating and ventilating supplies and equipment in the building situate upon the premises hereinbefore described. That the defendant Scandinavian-American Building Company breached said contract, to the defendant Ben Olson Company's damage in the sum of \$13,407.43, and Ben Olson Company is hereby decreed to have and recover judgment from the defendant Scandinavian-American Building Company in the sum of \$13,407.43, together with interest amounting to \$1043.60, and for its costs and disbursements taxed herein in the sum of \$10.00. That under and in accordance with said contract defendant Ben Olson Company furnished materials to be installed and used in the construction of the defendant Scandinavian-American Building Company's building aforesaid, and furnished labor in connection within the installation thereof, of the reasonable value and amount of \$9437.75, and thereafter and within ninety days after the cessation of the performance of said labor and the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant [377] Scandinavian-American Building Company and said real property, and thereafter and within the time limited by the statutes of the state of Washington, commenced suit in this court and cause to establish and foreclose said lien, but that by reason of the inclusion in said claim of lien of grossly excessive amounts, and by reason of said defendant's failure to pay the defendant Crane &

Company, whereby Crane & Company were required to and did file a claim of lien and establish the same in this suit, and because the value of the labor performed upon and material actually furnished to said defendant Scandinavian-American Building Company is less than the proper offsets and credits thereto, and for want of equity in said claim, it is decreed that defendant Ben Olson Company have no lien whatsoever upon the real property hereinabove described.

#### XXVII.

That within one year prior to January 15, 1921, the defendant Otis Elevator Company, under a contract with the defendant Scandinavian-American Building Company for the furnishing and installing of certain elevators, furnished material to the Scandinavian-American Building Company to be used in the construction of the building situate upon the real property hereinabove described, and furnished labor in connection with the installation thereof, of the reasonable value and amount of \$642.45, and thereafter and within ninety days after the cessation of the performance of said labor and the furnishing of said material, executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant [378] Scandinavian-American Building Company and said real property, and thereafter and within the time limited by the statutes of the state of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said

defendant Otis Elevator Company be and it is hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$642.45 together with interest amounting to \$49.68, and for an attorney's fee of \$125, which is expressly decreed to be reasonable, and for its costs and disbursements taxed herein in the sum of \$10.00; and further that said defendant Otis Elevator Company has a valid and subsisting contractor's lien upon the real property hereinabove described to secure the payment of all sums for which it is hereby awarded a judgment.

XXVIII.

That within one year prior to January 15, 1921, defendant Edward Miller Cornice & Roofing Company furnished to and at the instance of the defendant Scandinavian-American Building Company material to be used in the construction of said Building Company's building situate upon the real property hereinabove described, of the reasonable value of \$16.10, and furnished material and labor in the installation thereof to said defendant upon said building under a contract for installing certain flashing, of the reasonable value of \$43, and likewise within said period furnished material and labor in the installation thereof to said defendant Scandinavian-American Building Company, which labor was furnished upon and said material was furnished to be used in the construction of said Building Company's building situate [379] upon the real property hereinabove described, under a contract for the installing of certain roofing and sheet metal,

the reasonable value of which labor and material furnished, over and above all just credits and offsets, is the sum of \$270, and that by reason of the defendant Scandinavian-American Building Company's breach of its contract with defendant Edward Miller Cornice & Roofing Company, the latter has been damaged in the sum of \$1,600, and that by reason thereof Edward Miller Cornice & Roofing Company be decreed to have and recover judgment from the Scandinavian-American Building Company in the aggregate sum of \$1,929.10 with interest amounting to \$128.22, and for its costs and disbursements herein taxed in the sum of \$5.00, and that within ninety days after the cessation of the performance of said labor and the furnishing of said material, said defendant Edward Miller Cornice & Roofing Company executed and caused to be filed in the office of the Auditor of Pierce County, a due and proper notice of claim of lien against said defendant Scandinavian-American Building Company and said real property, and thereafter and within the time limited by the statutes of the state of Washington, commenced suit in this court and cause to establish and foreclose said lien, and that by reason thereof said defendant Edward Miller Cornice & Roofing Company be and it is hereby decreed to have a valid and subsisting materialman's lien upon the real property hereinabove described, to secure the payment of \$16.10, and a valid and subsisting contractor's lien upon said real property to secure the payment of \$313 together with an attorney's fee of \$175 which is hereby expressly

decreed to be reasonable, together with interest [380] amounting to \$24.05, and its costs taxed herein.

XXIX.

That on February 28, 1920, the Washington Brick, Lime & Sewer Pipe Company entered into a contract with the Scandinavian-American Building Company whereby it agreed to manufacture and deliver terra cotta for said building, according to special designs of the architect, for the sum of \$109,000; that pursuant to said contract said company fabricated and shipped to Tacoma, Washington, terra cotta of the value of \$58,657.50 and fabricated and stored at its plant terra cotta of the value of \$40,632.58, but no part thereof was used in said building, or delivered to the building company or used in said building, and title thereto was at all times vested in the manufacturer, and the Washington Brick, Lime & Sewer Pipe Company is not entitled to a lien for any part of the value thereof; that said Building Company paid on account of said contract \$20,000, but failed to further perform and carry out the same, and breached said contract, and by reason thereof said defendant has been damaged to the sum of \$72,511.13, and interest, and the defendant Washington Brick, Lime & Sewer Pipe Company be and it is hereby decreed to have and recover judgment against Scandinavian-American Building Company in the sum of \$72,511.13, and interest amounting to \$5,595.43, and for its costs and disbursements taxed herein in the sum of \$122.40.



## XXX.

That the defendant Theodore Hedlund, doing business under the firm name and style of Atlas Paint Company failed to appear and offer any proof in support of his answer and cross-complaint, and that by reason thereof the same is hereby dismissed. [381]

## XXXI.

That within one year prior to January 15, 1921, the defendant Morris Kleiner, doing business as Liberty Lumber & Fuel Company furnished material to the defendant Scandinavian-American Building Company of the reasonable value of \$128.14, and that by reason thereof is hereby decreed to have and recover judgment against the defendant Scandinavian-American Building Company for the sum of \$128.14, with interest amounting to \$9.89.

## XXXII.

That each and all of the several judgments herein rendered in favor of the complainant and the several and respective lien claimants and cross-complainants shall bear interest at the rate of six per cent per annum from the date of the entry hereof until paid, and the several liens hereinbefore decreed in favor of said lien claimants or cross-complainants are likewise hereby decreed to secure the payment of such interest.

## XXXIII.

That the waivers of lien made by the following defendants, to wit, the several copartners doing business under the name and style of Tacoma Mill-

work Supply Company, E. E. Davis & Company, Edward Miller Cornice & Roofing Company, Otis Elevator Company, H. C. Greene, Ben Olson Company, were induced by and made in reliance upon certain false material representations made by or on behalf of the defendant Scandinavian-American Building Company, which representations amounted to and constituted constructive fraud, and that by reason thereof said waivers are decreed to be of no force and effect, and that in addition thereto the defendant E. E. Davis & Company upon discovery of the falsity of said representations and upon the breach by the defendant Scandinavian-American [382] Building Company of its contract, promptly rescinded its contract with said defendant Scandinavian-American Building Company.

#### XXXIV.

That the defendant Scandinavian-American Bank of Tacoma and John P. Duke, as Supervisor of Banks of the State of Washington, assert a lien upon the real property hereinabove described, by reason of a certain mortgage executed October 27, 1915, by J. E. Chilberg and wife to the Penn Mutual Life Insurance Company; and thereafter and subsequent to January 17, 1921, and to the time when said John P. Duke as such Supervisor took charge of the property, assets and affairs of said Scandinavian-American Bank of Tacoma and of the liquidation of said bank, said mortgage was, by assignment in writing, assigned and transferred to the said John P. Duke as such Supervisor of

Banks in charge of the liquidation of the said defendant Scandinavian-American Bank of Tacoma. That subsequent to the making of said mortgage the said J. E. Chilberg and wife conveyed the premises covered thereby to the defendant Scandinavian-American Bank, subject to said mortgage, and thereafter defendant Scandinavian-American Bank conveyed said premises by deed, warranting the same to be free and clear of all encumbrances, to the defendant Scandinavian-American Building Company, and that by reason of said warranty the purported purchase and taking of an assignment of said mortgage by the defendant J. P. Duke as such Supervisor of Banks, operated as a payment of and to discharge said mortgage, and that by reason thereof and for want of equity, the cross-complaint of the defendant Scandinavian-American Bank of Tacoma and J. P. Duke as Supervisor of Banks of the State of Washington, in charge of the liquidation of the defendant Scandinavian-American Bank, based upon said mortgage is hereby dismissed.

[383]

## XXXV.

That the second cross-complaint of the defendants Scandinavian-American Bank of Tacoma and J. P. Duke, as Supervisor of Banks of the State of Washington, in charge of the liquidation of the Scandinavian-American Bank of Tacoma, seeking to establish a lien upon the real property hereinabove described, in the sum of \$350,000 besides interest, in the nature of a purchase money mortgage and claimed to arise out of the agreement attached to

the answer and cross-complaint of said defendants as Exhibit "X," be and the same is hereby dismissed for want of equity.

XXXVI.

That with respect to the third cross-bill of complaint of said defendants Scandinavian-American Bank of Tacoma and John P. Duke, as such Supervisor of Banks, for the foreclosure of the \$600,000 mortgage therein described, it is expressly decreed that G. Wallace Simpson was without right, power or authority to assign or transfer the mortgage in said cross-bill referred to, to the defendant Scandinavian-American Bank of Tacoma, and that said assignment was an attempted pledge and security for the payment of a previously created and then existing indebtedness and was made without any notice to or the knowledge of the several parties herein decreed to have liens, and long subsequent to the commencement of the furnishing of labor or material by the complainant and other lien claimants, and was in contravention of the Constitution of the State of Washington, and such assignment rendered said mortgage void as against the several parties herein decreed judgments against the Scandinavian-American Building Company, and that Scandinavian-American Building Company was the agent of the defendant Scandinavian-American Bank of Tacoma for [384] the purpose of providing the said bank with suitable banking quarters, and was at all times subject to the control of and controlled by said bank, and that by reason thereof and because of the trust relation thereby arising, the defendant

Scandinavian-American Bank of Tacoma and the defendant John P. Duke as Supervisor of Banks of the State of Washington in charge of the liquidation of said Scandinavian-American Bank of Tacoma, could not obtain any advantage by reason of the assignment of said \$600,000 mortgage to said bank, and therefore and for want of equity in said cross-complainants' said third cross-bill of complaint, is hereby dismissed.

### XXXVII.

That defendant J. P. Duke as Supervisor of Banks for the State of Washington, is entitled to a judgment against defendant Scandinavian-American Building Company on account of the moneys paid in procuring the assignment of the mortgage described in his first cross-bill of complaint and referred to in paragraph XXXIV hereof, which judgment, however, shall be subordinate and inferior in its lien and rank to all other judgments herein or hereby decreed against said Scandinavian-American Building Company, and that said defendant J. P. Duke as such Supervisor of Banks, is therefore hereby decreed to have and recover judgment against the Scandinavian-American Building Company in the sum of \$72,366.35, and interest amounting to \$4,293.73, but that said judgment is hereby expressly decreed to be inferior and subordinate in lien and rank to each and every other judgment hereby decreed against defendant Scandinavian-American Building Company.

### XXXVIII.

That from time to time during the year 1920, and



prior to January 15, 1921, defendant Scandinavian-American Bank of [385] Tacoma, advanced to and for the benefit of defendant Scandinavian-American Building Company, various amounts aggregating \$232,094.42, no part of which has been repaid, and that on account thereof, J. P. Duke, as Supervisor of Banks for the State of Washington, be and he is hereby decreed to have and recover judgment against said Scandinavian-American Building Company in the sum of \$232,094.42, and interest amounting to \$19,136.62, and for his costs and disbursements to be taxed herein in the sum of \$——.

XXXIX.

That defendant Forbes P. Haskell, as Receiver of Scandinavian-American Building Company, at the time of his appointment as such Receiver, waived any and all right to personal compensation as such Receiver, but that a reasonable sum to be allowed to him as part of the expenses of said receivership and for the services of his attorney, F. D. Oakley, is the sum of \$10,000.

XL.

That there is now due and owing from the defendant Scandinavian-American Building Company on account of the several sums hereinbefore decreed to be liens upon its property, an aggregate of \$268,157.37 principal and \$24,635 as attorney's fees, and interest amount to \$23,305.65, and costs of \$479.32. That said defendant Scandinavian-American Building Company is hereby required, within ten days after the entry of this decree, to pay or cause to be

paid to the Clerk of this court, subject to the further order of this Court, the above sums, aggregating \$316,577.34, together with interest thereon at the rate of six per cent per annum from the date hereof until paid, and upon payment of said amount and upon making and filing in this court an undertaking to pay such sums as the said defendant [386] Scandinavian-American Building Company may be hereafter directed to pay on account of court costs or further expenses in this cause accruing, the Scandinavian-American Building Company may apply to this Court to be relieved from the operation of the decree of foreclosure and sale herein contained, with respect to its property, and upon such payment all interest upon said amounts and the several liens shall cease, and the said defendant shall be entitled to the relief of this decree to that extent; any undertaking which may be given by said defendant for the purposes aforesaid shall be secured by a lien upon all the property of said defendant within this district and hereinbefore described, which lien in such case is hereby charged upon said property and the said defendant shall from time to time in such event execute, acknowledge, deliver and record such assignment or assignments as this Court shall direct to give effect to said lien.

#### XLI.

That the several liens hereinbefore decreed to be established and each and all of them be and they are hereby foreclosed, and the defendants Scandinavian-American Building Company, Forbes P.

Haskell, as Receiver of Scandinavian-American Building Company, Scandinavian-American Bank of Tacoma, Washington, John P. Duke, as State Supervisor of Banks in charge of the liquidation of said Scandinavian-American Bank of Tacoma, and Forbes P. Haskell, as Special Deputy Supervisor of Banks in active charge of the liquidation of said Scandinavian-American Bank of Tacoma, G. Wallace Simpson, Frederick Weber, Washington Brick Lime & Sewer Pipe Company, United States Machine & Engineering Company, Tacoma Shipbuilding Company, Ben Olson Company, Morris Kleiner, doing business as Liberty Lumber & Fuel Company, J. A. Soderberg, doing business as West Coast Monumental Company, Theodore Hedlund, doing business at Atlas Paint Company, F. W. Madsen, Sherman Wells, Carl J. [387] Gerringer, George Gerringer, A. W. Aufang, W. E. Morris, Gustaf Jonasson, and all persons claiming or hereafter to claim by, through or under them or any of them including Seattle Hardware Company, a corporation, be and they are hereby foreclosed of all right, estate and interest in and to the real property hereinabove described and hereinafter ordered sold, except such equity of redemption as they may have by law, and that unless the defendant Scandinavian-American Building Company shall be relieved from the operation of this decree as hereinbefore provided, a Special Master Commissioner hereinafter appointed is hereby authorized and directed to sell at public auction to the highest and best bidder, for cash, all and singular the following described

property situate in the County of Pierce, State of Washington, and within the Western District of Washington, Southern Division, against which the foregoing several liens are established, to wit:

Lots ten (10), eleven (11) and twelve (12) in Block ten hundred three (1003), as the same are shown and designated upon a certain plat entitled, "Map of New Tacoma, W. T.," which was filed for record in the office of the Auditor of Pierce County, Washington Territory, February 3, 1875.

together with all the hereditaments and appurtenances thereto belonging, and the rents, issues and profits therefrom arising or in any manner appertaining.

#### XLII.

All of the property directed by this decree to be sold shall be sold without valuation, appraisement, extension or stay of execution, but subject to the right of redemption allowed by the laws of Washington by R. F. Laffoon, of Tacoma, who is hereby appointed Special Master Commissioner for that purpose, at public auction to the highest bidder for cash, at the principal entrance of the Court House of Pierce [388] County, Washington, in the city of Tacoma, Pierce County, Washington, at such time as this Court may fix by order hereinafter entered herein.

The Special Master Commissioner shall give notice of such sale by publication once a week for four successive weeks, prior to such sale, in a newspaper printed and regularly issued, and having a

general circulation in the County of Pierce and State of Washington, the Court hereby finding and directing that such notice so published shall be sufficient for the sale of said property, providing each notice shall contain a description of the property to be sold, a statement of the time and place of sale and a reference to this decree for a statement of the terms and conditions of such sale; such publication shall be begun forthwith upon the entry of the order fixing the date of sale.

The Special Master Commissioner may in his discretion, adjourn the sale from week to week for such reasonable time as may seem to him good and sufficient, by announcing such adjournment and the time and place to which such sale shall be adjourned, at the time appointed for such sale, and may in like manner from time to time adjourn such sale without further advertisement.

Any party to this cause may bid in and purchase said property at said sale and may hold the property so purchased in his, its or their own right, free from all interest of the parties hereto whatsoever, except the equity of redemption provided by law. [389]

The Special Master Commissioner shall receive no bid from any one offering to bid, who, prior to said sale, shall not have deposited with him or delivered to him as a pledge that such bidder will make good his bid in the event of its acceptance, in money or certified check therefor, on some bank or trust company having a paid up capital and surplus of not less than \$100,000, the sum of \$10,000.



The deposit made by any unsuccessful bidder shall be returned to such unsuccessful bidder when the property shall be struck off. The deposit of any successful bidder shall be applied on account of the purchase price of the property. In case any bidder shall fail to make good his bid upon its acceptance by said Special Master Commissioner, or shall, after such acceptance fail to comply with any order of this Court relating to the payment thereof or to the consummation of the purchase, then the money or check theretofore deposited by such purchaser shall be forfeited as a penalty for such failure, and shall be applied to the expenses of a resale and toward making good any deficiency or loss in case the property purchased by him shall be sold at a less price of such resale, or shall be applied to the payment of any deficiency remaining unpaid on account of the several liens against the property ordered sold, in the event that any resale had under the terms of this decree shall not pay the full amount herein found to be due upon such liens, together with all the costs and expenses of this proceeding.

If such sale shall not be confirmed by the court such deposit shall be returned to the bidder. If the sale is confirmed there shall be paid in cash out of the deposit made by the bidder, such sums as the Court may at the time of the confirmation of said sale direct, in order to pay the [390] costs and expenses of foreclosure and sale, all sums so paid, to apply upon the purchase price of the property sold and the remainder of the purchase price

shall be paid in cash or partly in cash and partly by the application of the purchaser's judgment thereto, as provided in the next succeeding paragraph. Any portion of said deposit not required for the payments herein specified shall apply upon the balance of the purchase price. The purchaser or purchasers, his or their successors as assigns, shall not be bound to inquire into or see to the application of the purchase money.

XLIII.

That the property herein decreed to be sold cannot be sold in parcels without injury to the interests of the parties, and all of said property is hereby directed to be offered for sale as an entirety, subject to the confirmation of such sale by this court.

XLIV.

The fund arising from the sale of the premises hereinbefore directed to be sold shall be applied as follows, and in the following order, to wit:

(a) To the payment of the expenses of such sale, including the fees and expenses of the Special Master Commissioner appointed to conduct said sale, which fees are hereby fixed at the sum of \$500.00, and to the payment of the further costs of this suit including Clerk's fees and commissions.

(b) To the payment of the attorney's fees hereby allowed the Receiver, and to the payment of all Receiver's certificates heretofore or hereafter, and pending the confirmation of sale, issued by Forbes P. Haskell as Receiver of Scandinavian-American Building Company under the orders and

direction of this [391] court as heretofore made and entered or which may be hereafter made and entered, together with interest accrued on such certificates as provided therein. The total of the principal amount of such certificates now issued is hereby expressly found and decreed to be \$17,361.28.

(c) To the payment and discharge of the several liens, including principal, interest, attorney's fees and costs in the following rank and order of priority: (1) all labor liens; (2) all materialmen's liens; (3) all contractor's liens; provided that if the proceeds shall be insufficient to pay in full all of the liens in any one class, then such moneys available for the payment of the liens of that class shall be apportioned among the several lien claims in the ratio that the aggregate of each lien claim,—that is to say, the total of principal, interest, attorney's fees and costs,—bears to the total of all the lien claims in said class.

(d) To the equal and ratable payment and discharge of the several judgments hereby decreed against the defendant Scandinavian-American Building Company, which are unsecured by specific liens upon the premises ordered sold, but without priority whether or principal, interest or costs, as between said several judgments, save and except that the judgment hereinbefore rendered in favor of J. P. Duke as Supervisor of Banks for the State of Washington, for the sum of \$72,366.35 and \$4,293.73 interest, shall not share in the distribution of said proceeds until all other general and

unsecured judgments have been fully paid and satisfied.

(e) Any surplus remaining shall be paid to the Clerk of this court to be held by him subject to the further order [392] of this court.

XLV.

The Court reserves for consideration, upon the coming in of the Special Master Commissioner's report of sale, all matters relating to the adequacy of the bid and reserves the right as a condition of the acceptance of any bid, upon application for the confirmation of any sale, to impose such terms upon the purchaser as the Court may see fit, and may reject any bid and may retake and resell the property purchased if the Court shall deem such bid inadequate; and upon the failure of any bidder, the conditional acceptance of whose bid by the Special Master Commissioner shall have been confirmed and ratified by this Court, to comply with any order of this Court regarding the payment of the purchase price, within thirty days after service of notice of the entry of such order, all sums paid by the defaulting purchaser shall be forfeited as a penalty for such noncompliance as hereinbefore provided, and the Court reserves full jurisdiction to enter any order, judgment or decree necessary to enforce the provisions of this decree against any such defaulting purchaser or purchasers.

XLVI.

The purchaser or purchasers, his or their successors or assigns, shall have the right to enter his or their appearance in this court, and he or they,

or any of the parties to this suit, shall have the right to contest any claim, demand or allowance existing at the time of the sale and then undetermined, and any claim or demand which may hereafter arise or be presented, which would be payable by such purchaser, purchasers, or their successors or assigns, or which would be payable out of the purchase price, and he or they may appeal from any decision relating to any such claim, demand or allowance. [393]

## XLVII.

Upon confirmation of the sale and payment in full of the purchase price, and upon compliance with all the terms of the sale, including the execution of all undertakings and agreements, and the giving of any security which may be required by this Court in pursuance of the terms of this decree, the Special Master Commissioner making the sale shall make, execute and deliver to the purchaser or purchasers, his or their successors or assigns, a certificate of purchase describing the property sold and the amount bid therefor, and the time when said purchaser shall be entitled to a deed therefor, and upon the expiration of the period of one (1) year from the date of sale allowed by the laws of Washington for the redemption of said property from the sale thereof, said Special Master Commissioner, in event said property shall not have been redeemed, as provided by the laws of the State of Washington, make, execute, acknowledge and deliver to said purchaser or purchasers, a deed of conveyance of said property so sold.



The person, corporation, association or committee to whom said Special Master Commissioner's certificate of purchase, or deed, shall be delivered, shall be let into the possession of the said property and all of the parties to this cause, and all persons and corporations claiming by, through or under them, or any of them, are ordered and required to surrender and deliver up possession of the said property to such person, or persons, or such corporation, association or committee, to whom, or to which, said Special Master Commissioner's certificate of Purchase or deed shall be delivered, or to his, their, or its, successors or assigns. [394]

The Court reserves exclusive power and jurisdiction to deliver to the purchaser or purchasers title to and possession of the property hereinbefore directed to be sold, and to determine any and all controversies as to the character, extent and validity of the possession of such purchaser, or purchasers, acquired through the execution of this decree, or by or under the terms of this decree.

XLVIII.

The Court reserves for future determination all questions relating to the rendering of any decree for any balance that may be found to be due to any of the lien claimants, over and above the proceeds of the sale herein directed, and all matters of equity not herein expressly adjudged, including any and all conflicting claims of title or equitable claims or rights arising between the parties to this cause or between any purchasers under this decree.

## XLVIX.

It is further ORDERED, ADJUDGED AND DECREED that any party to this cause, or any person or persons who may become purchasers under this decree, may apply for further order and direction touching the matters and issues undisposed of by this decree, or relating to costs, allowances and disposal of proceeds of sale, and this Court retains full jurisdiction of this cause respecting any of the matters and things regarding which this Court has not made final and complete disposition, and like full jurisdiction of any and all matters properly arising as collateral or incidental to such matters. [395]

L.

That other than herein expressly decreed and except as jurisdiction may have been hereinbefore expressly reserved, all further, additional or different relief prayed for by any of the parties hereto be and it is hereby denied.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 2, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [396]

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**Order Correcting Decree.**

This cause coming on to be heard upon the complainant's motion to amend and correct the decree heretofore entered in this cause, said motion having

been duly noticed for hearing on this day and the Court being duly advised in the premises,—

DOTH NOW ORDER that said motion be and the same is hereby in all respects granted; and DOTH FURTHER ORDER that paragraph XL of said decree in this cause be amended by interlineation so that the first sentence of said paragraph shall read as follows:

“That there is now due and owing from the defendant Scandinavian-American Building Company on account of the several sums hereinbefore decreed to be liens upon its property an aggregate of \$268,157.37, principal, and \$24,635 as attorneys’ fees, and interest amounting to \$23,305.65, and costs of \$479.32, besides the fees allowed for the services of the receiver’s attorney, and the outstanding receiver’s certificates.”

And so that the figures “\$316,565.55” in line 10 of said paragraph shall read “\$316,577.34.”

Done in open court this 30th day of June, 1922.

EDWARD E. CUSHMAN,  
Judge. [397]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 30, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [398]

### **Exceptions of Tacoma Millwork Supply Company to Decree.**

The defendants, R. T. Davis, Jr., and others doing business under the firm name and style of Tacoma Millwork Supply Company, a copartnership, through their attorneys, Flick & Paul, do hereby except to the judgment and decree entered in the foregoing cause on the 2d day of May, 1922, and to each and every part thereof.

#### I.

They except to any portions of said decree granting priority to any of the other material lien claimants above the status given to the entire material furnished by Tacoma Millwork Supply Company, whether delivered or not on the building site.

#### II.

The Millwork Company further excepts to said decree and all those parts thereof which grant the Tacoma Millwork Supply Company a lien for only that portion of material actually delivered upon the premises and for only that work actually done upon the premises and which deny lien relief for that material actually manufactured, tendered to or stored in behalf of said building company.

#### III.

Said Millwork Company further excepts to said decree and each and every part thereof for its failure to give to said claimant a lien for all of the material specified in its schedules attached to its complaint. Said Millwork Company further excepts to said decree in that it does not recognize the

right of lien on the part of the Millwork Company for all of its materials which were specifically fashioned as per architectural design, in view of the fact that tender of said materials was made and at the instance and under the direction or by the consent of the owners on the ground, said materials were stored in warehouses. [399]

IV.

Said defendant Millwork Company further excepts to the proposed sale of said building without the inclusion, as part of the assets of said building, of the materials described in the schedules attached to this claimant's complaint, and its *pro rata* participation, in that manner, in the proceeds of said sale.

V.

The said claimant excepts to each and every portion of paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, as granting to said parties materialmen's liens for materials furnished upon the premises as against the refusal to grant, as set forth in paragraph 25, this claimant material liens in the amount of \$57,005.67, on the theory that though there was constructive delivery, there was not actual delivery upon the premises, for the reason that the said finding is against the facts adduced and the law involved and further excepts to findings in said paragraph 25 granting only a personal judgment against said Building Company for the amount of \$57,005.67, instead of a lien for the amount upon said premises and for the same reason excepts to the finding and judgment in said paragraph relat-



ing to the claiming of a lien in the amount of \$4,657.50, and interest, as lienable material in the face of the tender and delivery into warehouses of all of said material amounting, with interest, to a total of \$62,735.15, and also excepts to the finding of said paragraph granting only personal judgment in the amount of \$4,657.50, instead of granting judgment for said amount by way of a lien upon said premises, and further excepts to a judgment in damages for said amounts instead of a judgment and decree of lien for said amounts.

#### VI.

Further excepts to paragraphs 16, 17, 18, 19, 21, for the reason that the Court, in said paragraphs, grants liens for materials delivered on the premises as against materials delivered in warehouses at the direction of the owner, which was done by this [400] claimant.

#### VII.

Further excepts to any finding in the said decree granting to the Scandinavian-American Bank a right prior to this lien claimant by reason of any advances, so-called, under the \$600,000.00 mortgage as claimed by said Bank, or by reason of any advances by way of payment of the Penn-Mutual Mortgage in the amount of \$70,000.00 for the reason that said claims are subordinate, under the facts, to all of the claims of this claimant, whether allowed as a lien or not, in that the said allowances to said bank are in the face of certain representations made which estop said bank from claiming any rights prior to this lien claimant, and particularly

excepts to the granting of a judgment, general in its nature, to said bank for advances made upon said \$600,000.00 mortgage, as alleged.

VIII.

This claimant further excepts to said decree in that it would not grant and does not grant to this claimant a lien in the full amount claimed by it in the complaint and the schedules thereto attached, and further excepts to the failure of the Court to grant said claimant as and by way of attorneys' fees a sum proportionate to the sums allowed other claimants herein, and specifically excepts to the finding implied by this decree that a delivery upon the premises or use of the material actually in the building is required, under the statutes of the State of Washington in the premises.

IX.

This claimant further excepts to each and all of the findings portrayed in the memorandum decision signed by His Honor Judge Cushman, in this cause, on the — day of —, 1922, and repeats by reference thereto all of the exceptions as against said findings, filed in this cause as though herein again specifically set forth. [401]

X.

This claimant further excepts to any portion of said judgment and decree which grants to any materialman, or to any claim other than the preferred class of laborers' rights superior and prior to these appellants as materialmen, and which grants any rights superior or prior to the rights of these ap-

pellants in their labor claim as recited in the schedules attached to said appellants' claim.

### XI.

This claimant further and finally excepts to the refusal of the Court to enter an order declaring that all of the material recited in the schedules attached to plaintiff's complaint was and is an integral part of the premises or property herein sought to be liened, for the reason that said appellant tendered all of said material within the time limited by their contract, that it was specially designed and worthless upon their hands, and that it was stored with the consent of the owner and retained in the storehouse away from the property only because of the owner's convenience and the safety of the material.

FLICK & PAUL,

Attorneys for the Defendant Tacoma Millwork Supply Company.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 3, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [402]

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### **Petition for Appeal of Forbes P. Haskell, Jr.**

Forbes P. Haskell, Jr., as Receiver of the Scandinavian-American Building Company, a corporation, and duly and legally appointed, qualified and acting as such in the above-entitled action, feeling himself aggrieved by the decree made and entered in the above-entitled cause on the 2d day of May,

1922, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reason specified in the assignment of errors, which is filed herewith, and he prays that his appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made.

GUY E. KELLY and  
THOMAS MacMAHON,

Attorneys for Forbes P. Haskell, Jr., as Receiver  
of the Scandinavian-American Building Com-  
pany.

The foregoing petition for appeal is hereby allowed this 21st day of July, 1922, upon giving bond conditioned as required by law in the sum of \$500.00.

EDWARD E. CUSHMAN.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 21, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [403]

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**Bond on Appeal of Forbes P. Haskell, Jr.**

KNOW ALL MEN BY THESE PRESENTS:  
That I, Forbes P. Haskell, as Receiver of the Scan-

dinavian-American Building Company, a corporation, as principal, and the National Surety Company of New York, a corporation, organized under the laws of the State of New York, and authorized to transact the business of Surety in the State of Washington, as Surety, are held and firmly bound unto McClintic-Marshall Company, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tenant, Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Co., G. Wallace Simpson, Savage-Scofield Company, a corporation, Puget Sound Iron & Steel Works, a corporation, E. E. Davis & Company, a corporation, St. Paul & Tacoma Lumber Company, a corporation, Far West Clay Company, a corporation, Henry Mohr Hardware Company, Inc., a corporation, Hunt & Mottet, a corporation, Edward Miller Cornice & Roofing Company, a corporation, Washington Brick, Lime & Sewer Pipe Company, a corporation, Otis Elevator Company, a corporation, United States Machine & Engineering Co., a corporation, Crane Company, a corporation, Ben Olson Co., a corporation, H. C. Greene, doing business as H. C. Greene Iron Works, Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company, S. O. Matthews and Frank L. Johns, copartners [404] doing business under the firm name and style of City Lumber Agency, J. D. Mullins doing business



as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves, copartners doing business as P & G. Lumber Company, Morris Kleiner, doing business as Liberty Lumber & Fuel Company, J. A. Soderberg, doing business as West Coast Monumental Co., Theodore Hedlund, doing business as Atlas Paint Co., F. W. Madsen, Gustaf Jonasson, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F L Swain, D A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed. Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. F. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, E. A. Fetterly, Thomas S. Short, and Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal, Sherman Wells, Carl J. Geringer, George Geringer, F. R. Schoen, A. W. Aufang, C. H. Boedecker, William L. Owen, F. N. Bergen, F. H. Godfrey, Seattle Hardware Company, a corporation, Frederick Webber and O. S. Larson, and W. E. Morris, Colby Star Manufacturing Company, a corporation, Tacoma Shipbuilding Company, a corporation, J. P. Duke as Supervisor of Banks of the State of Washington, and as successor in office to the defendant Claude P. Hay, as State Bank Commissioner of the State of Washington, Forbes P. Haskell, Jr., as Special Deputy Supervisor of Banks of the State of Washington,

and Scandinavian-American Bank of Tacoma, a corporation, the defendants above named, in the full and just sum of Five Hundred Dollars (\$500.00); to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and [405] successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 31st day of July, 1922.

THE CONDITION of this obligation is such, that whereas, in the above-named action there was signed and entered in the District Court of the United States, for the Western District of Washington, Southern Division, on the 2d day of May, 1922, a judgment and decree, in favor of the complainant above named and others adjudging their respective rights and granting to said complainant and others of the cross-complainants and defendants herein mentioned, rights superior to and prior to the claimed and alleged rights of appellant herein, and whereas the said principal herein has obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and filed a copy thereof in the office of the Clerk of the Court to reverse the said decree and a citation directed to the said complainant and the other defendants and cross-complainants herein named admonishing them and each of them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, in the State of California, within thirty days from July 31, 1922.

Now, if the said Forbes P. Haskell, Jr., as Receiver of the Scandinavian-American Building Company, a corporation, shall prosecute his appeal to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

FORBES P. HASKELL, Jr.,  
Receiver of the Scandinavian-American Building  
Company, a Corporation. [406]

NATIONAL SURETY COMPANY OF  
NEW YORK.

By FREDERIC D. METZGER,  
Resident Vice-President.

By W. B. GILHAM,  
Resident Assistant Secretary.

Approved this 31st day of July, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 31, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [407]

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**Assignment of Errors of Forbes P. Haskell, Jr.**

Forbes P. Haskell, Jr., as Receiver of the Scandinavian-American Building Company, a corporation, respectfully submits and makes the following assignment of errors in the above-entitled cause upon which he relies as supporting his appeal from the judgment and decree made and entered

in the above-entitled cause on the 2d day of May, 1922, and under which assignment of errors said appellant seeks reversal of the decision, judgment and decree of said Trial Court.

### I.

The Court erred in holding that the McClintic-Marshall Company, a corporation, complainant herein, has a valid and subsisting materialmen's lien upon the real estate, premises, or any part thereof described in paragraph three of said decree, for the reason that the arbitration agreement contained in the contract between the complainant and the Scandinavian-American Building Company was not complied with by the complainant and its failure and refusal to arbitrate matters in dispute under the contract constituted a bar to the prosecution of this action to maintain and foreclose a lien claim.

### II.

The Court erred in not holding that because of the arbitration agreement contained in the contract between McClintic-Marshall Company, and Scandinavian-American Building Company, that the complainant had waived its right of lien under the Statutes of the State of Washington, in such cases made and provided, until and unless it had substantially complied with the arbitration agreement which was a binding and valid agreement under both the [408] laws of the State of Washington, and of the State of Pennsylvania, the domicile of complainant corporation.

III.

The Court erred in refusing to hold that because of the arbitration agreement referred to in the two preceding assignments of error the Court is without jurisdiction to hear and determine the merits of said claim and for that reason had no jurisdiction to hear and determine the subject matters involved in this litigation, and has no jurisdiction of the parties.

IV.

The Court erred in permitting the introduction of testimony in proof of the complainant's complaint and lien claim for the reason that the contract between complainant and the Scandinavian-American Building Company upon which complainant bases its right of recovery, provides that any controversies arising out of the contract should be submitted to arbitration, which was not done and said failure and refusal so to do constitutes a bar to the prosecution of said lien claim.

V.

The Court erred in not dismissing the bill of complaint.

VI.

The Court erred in holding that the Puget Sound Iron and Steel Works, a corporation, has a valid lien as provided in paragraph ten of said decree, for the reason that the said corporation never filed any complaint or cross-complaint, or other pleadings in this action, seeking a foreclosure of its alleged lien, [409] and under the laws of the State of Washington, such action must be insti-



tuted within eight months from the filing of its said lien claim.

#### VII.

The Court erred in decreeing a foreclosure of liens in this action because that when the Court appointed a receiver for the Scandinavian-American Building Company in the above-entitled action, the Court deprived itself of the power to foreclose the lien claim and had only the power and right to allow or reject claims in the receivership proceeding and to determine the rank and priority of each claim allowed.

#### VIII.

The Court erred in holding lien claimants entitled to interest and attorney's fees for the reason set forth in assignment of error No. VII and for the further reason that in a receivership proceeding interest and attorney's fees are not allowable as attempted to be allowed in the decree entered herein.

#### IX.

The Court erred in holding in paragraph XXXIII of the decree entered herein that the Tacoma Millworks Supply Company, E. E. Davis & Company, Edward Miller Cornice & Roofing Company, Otis Elevator Company, H. C. Greene, Washington Brick, Lime & Sewer Pipe Company, Ben Olson & Company, were induced to enter into their contracts containing waivers of lien by reason of false and fraudulent representations made on behalf of the Scandinavian-American Building Company, and in decreeing [410] that by reason thereof that

the said waivers be of no force and effect and in allowing any of said claimants in this paragraph XXXIII mentioned, or Crane Company, a lien claim or claims in this action, for the reason that the said lien waiver clauses are valid and binding obligations.

WHEREFORE, the above-named Receiver prays that said decree may be reversed and that said Court be directed to dismiss said action, or to enter such decree as the Court may direct as equitable herein.

GUY E. KELLY,  
THOMAS MacMAHON,  
Attorneys for Forbes P. Haskell, Jr. as Such Receiver.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 21, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [411]

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**Citation on Appeal of Forbes P. Haskell, Jr.**

UNITED STATES OF AMERICA to McClintic-Marshall Company, a Corporation, Ann Davis and R. T. Davis, Jr., as Executors of the Estate of R. T. Davis, Deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, Copartners Doing Business Under the Name and Style of Tacoma Millwork Supply Co., G.

Wallace Simpson, Savage-Scofield Company, a Corporation, Puget Sount Iron & Steel Works, a Corporation, E. E. Davis & Company, a Corporation, St. Paul & Tacoma Lumber Co., a Corporation, Far West Clay Company, a Corporation, Henry Mohr Hardware Company, Inc., a Corporation, Hunt & Mottet, a Corporation, Edward Miller Cornice & Roofing Company, a Corporation, Washington Brick, Lime & Sewer Pipe Company, a Corporation, Otis Elevator Company, a Corporation, United States Machine & Engineering Co., a Corporation, Crane Company, a Corporation, Ben Olson Co., a Corporation, H. C. Greene, Doing Business as H. C. Greene Iron Works, Carl Gebbers and Fred S. Haines, Copartners Doing Business Under the Firm Name and Style of Ajax Electric Company, S. O. Matthews and Frank L. Johns, Copartners Doing Business Under the Firm Name and Style of City Lumber Agency, J. D. Mullins, Doing Business as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves, Copartners Doing Business as P. & G. Lumber Company, Morris Kleiner, Doing Business as Liberty Lumber & Fuel Company, J. A. Soderberg, Doing Business as West Coast Monumental Co., Theodore Hedlund, Doing Business as Atlas Paint Co., F. W. Madsen, Gustaf Jonasson, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom,

Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, and Robert M. Davis and Frank C. Neal, Copartners Doing Business Under the Firm Name and Style of Davis & Neal, Sherman Wells, Carl J. Gerringer, George Gerringer, F. R. Schoen, A. W. Aufang, C. H. Boedecker, William L. Owen, F. N. Bergen, F. H. Godfrey, and W. E. Morris, Colby Star Manufacturing Company, a Corporation, Tacoma Shipbuilding Company, a Corporation, Scandinavian-American Building Company, a Corporation, Scandinavian-American Bank of Tacoma, a Corporation, P. Claude Hay, as State Bank Commissioner for the State of Washington, and John P. Duke, His [412] Successor in Office, as Supervisor of Banks of the State of Washington, Forbes P. Haskell, as Deputy State Bank Commissioner for the State of Washington, Seattle Hardware Company, a Corporation, Frederick Webber, and O. S. Larson,  
GREETINGS:

YOU ARE HEREBY NOTIFIED that in a certain case in equity in the United States District Court in and for the Western District of Washington, Southern Division, wherein McClintic-Marshall Company, a Corporation, is complainant, and

Forbes P. Haskell, as Receiver of Scandinavian-American Building Company, a Corporation, et al., are defendants and cross-complainants, said case being numbered 117-E, in which case a Decree was entered and rendered by the said Court on the 2d day of May, 1922, an appeal has been allowed Forbes P. Haskell, as Receiver of Scandinavian-American Building Company, a corporation, defendant therein, to the United States Circuit Court of Appeals for the Ninth Circuit.

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, in the State of California, within thirty days from the date of this citation and there show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS, the Honorable E. E. CUSHMAN, Judge of the United States District Court for the Western District of Washington, this 31st day of July, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 31, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [413]



**Notice of Lodgment of Statement of Evidence in  
Behalf of Forbes P. Haskell.**

To \_\_\_\_\_,

Attorneys for \_\_\_\_\_.

You are hereby notified that on the 29th day of June, 1922, F. P. Haskell, as Receiver of the Scandinavian-American Building Company, one of the defendants above named, lodged with the Clerk of the above-entitled court his proposed statement of the testimony as provided in Equity Rule 75 (b), to be used by him on his appeal to the Circuit Court of Appeals for the Ninth Circuit; and take notice further that on the Friday, the 21st day of July, 1922, at 10 o'clock A. M., or as soon thereafter as the matter can be heard, the undersigned will apply to said Court to approve said statement.

KELLEY & MacMAHON,

Attorneys for F. P. Haskell, Receiver of Scandinavian-American Building Company. [414]

We, the undersigned, attorneys appearing on behalf of party litigants in the within entitled cause of action hereby accept service of notice of lodgment of statement of evidence in the within entitled matter on behalf of J. P. Duke, as Supervisor of Banking, this 3d day of July, A. D. 1922.

TEATS, TEATS & TEATS,

Attys. for Mullins Bros.

DAVIS & NEAL,

Attys. for Washington Brick, Lime & Sewer Pipe  
Co.

H. S. GRIGGS,

Atty. for St. Paul & Tac. Lbr. Co.

L. R. BONNEVILLE,

Atty. for Davis & Neal.

GROSSCUP & MORROW,

Attorneys for P. & G. Lumber Co. and Colby Star  
Iron Wks.

R. S. HOLT,

Atty. for Far West Clay Co.

FITCH & ARNSTON, and

R. S. HOLT,

Attys. for Savage-Schofield Co.

BURKEY O'BRIEN & BURKEY,

Attys. for City Lbr. Agency.

E. N. EISNHOWER,

Atty. for Ajax Electric Co.

BATES & PETERSON,

Attys. for P. S. Iron & Steel Wks.

W. W. KEYES,

Atty. for Henry Mohr & Hunt & Mottet.

HAYDEN, LANGHORNE & METZ-  
GER,

Attorneys for Complainant.

STILES & LATCHAM,

Attys. for Ben Olson Co. and F. H. Godfrey.

LUND & LUND,

DeWITT M. EVANS,

Attorney for F. R. Shoen. [415]

CHARLES BEDFORD,

Attorney for Hansen et al.

LOUIS J. MUSCIK,

Atty. for Liberty Lumber Fuel Co.

A. O. BURMEISTER,

Atty. for U. S. Mach. & Eng. Co.

LYLE, HENDERSON & CARN-  
HAN,

Attys. for Tacoma Shipbuilding Co.

S. F. McANALLY,

Atty. for Chas. Owens & Boedecker. [416]

We, the undersigned, attorneys appearing on behalf of party litigants in the within entitled cause of action hereby accept service of notice of lodgment of statement of evidence in the within entitled matter on behalf of J. P. Duke, as Supervisor of Banking, this 8th day of July, A. D. 1922.

J. W. REYNOLDS,

Atty. for E. E. Davis & Co.

HARTMAN & HARTMAN,

Attys. for Morris et al.

HERR, BAYLEY & CROSON,

Attys. for Seattle Hardware Co.

H. A. P. MYERS,

Attys. for H. C. Green, etc.

BAUSMAN, O. B. & E., for WEBBER,

WALTER S. FULTON,

Atty. for Crane Co.

FLICK & PAUL,

Attys. for Tac. Mill. Sup.

D. R. HOPPE,

Atty. for Theodore Hedlund.

TUCKER & HYLAND,

Atty. for O. S. Larson.

W. M. HARVEY,

Atty. for Edw. Miller Cornice & Roofing Co.

BOGLE, MERRITT & BOGLE,

Attorneys for Otis Elevator Co.

F. D. OAKLEY and

KELLY & MacMAHON,

Attorneys for J. P. Duke as Supervisor, etc.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 10, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [417]

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**Petition for Appeal of Tacoma Millwork Supply Company.**

Defendants, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company, through their attorneys, Flick & Paul, feeling themselves aggrieved do hereby appeal from a judgment and decree signed and entered in the foregoing cause and on the 2d day of May, 1922, in the District Court of the United States for the Western District of Washington, Southern Division, and from each and every part thereof, and do herewith present their several assignments of error, and do hereby pray the allowance of said appeal, and that so much and such portions of the record, the statement of facts and exhibits as may

be necessary to execute said appeal be forwarded from said court by the clerk of the District Court of the United States for the Western District of Washington, Southern Division, duly certified and authenticated under the seal of the said trial court, to the Circuit Court of Appeals for the 9th Circuit.

FLICK & PAUL,  
Attorneys for Defendants Tacoma Millwork & Supply Company.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 5, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [418]

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**Order Allowing Appeal of Tacoma Millwork Supply Company.**

BE IT REMEMBERED that this matter came on duly for hearing on the petition of R. T. Davis, Jr., and Ann Davis, as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the firm name and style of Tacoma Millwork Supply Company, for the allowance of their petition in appeal in the foregoing entitled cause from the decision of this Court made and entered on the 2d day of May, 1922, and the said appeal being from said decision to the Circuit Court of the United



States of America for the 9th Circuit; and this Court being duly advised in the premises,—

IT IS HEREBY ORDERED that the said appeal be allowed as prayed for, and the clerk of this court is hereby directed to formulate a true copy of the transcript of the records and proceedings to the extent necessary to properly present said appeal together with exhibits and other matters of record and the memorandum decision and formal decree of this Court, all duly authenticated and send same to the said Circuit Court of Appeals.

Done in open court this 3d day of May, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 3, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy Clerk. [419]

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**Bond on Appeal of Tacoma Millwork Supply Company.**

KNOW ALL MEN BY THESE PRESENTS: That the said Tacoma Millwork Supply Company, a partnership consisting of Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, defendants in the foregoing cause and appellants herein, as principals, and Southern

Surety Company, as surety, are held and firmly bound unto complainant McClintic-Marshall Company, and to Scandinavian-American Building Company, a corporation, Scandinavian-American Bank, a corporation, G. Wallace Simpson, Claude P. Hay as State Bank Commissioner for the State of Washington, Forbes P. Haskell as Deputy State Bank Commissioner for the State of Washington, Savage-Scofield Company, a corporation, Puget Sound Iron & Steel Works, a corporation, E. E. Davis & Company, a corporation, St. Paul & Tacoma Lumber Company, a corporation, Far West Clay Company, a corporation, Henry Mohr Hardware Company, Inc., a corporation, Hunt & Mottet, a corporation, Edward Miller Cornice & Roofing Company, a corporation, Washington Brick, Lime & Sewer Pipe Company, a corporation, Otis Elevator Company, a corporation, United States [420] Machine & Engineering Company, a corporation, Colby Star Manufacturing Company, a corporation, Tacoma Shipbuilding Company, a corporation, Crane Company, a corporation, Ben Olson Company, a corporation, H. C. Greene doing business as H. C. Greene Iron Works, Carl Gerbers, and Fred S. Haines, copartners doing business under the firm name *any* style of Ajax Electric Company, H. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency, J. D. Mullins doing business as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company, Morris Kleiner, doing business as

Liberty Lumber & Fuel Company, J. A. Soderberg, doing business as West Coast Monumental Company, Theodore Hedlund, doing business as Atlas Paint Company, F. W. Madsen and Gustaf Jonnasson, N. A. Hansen, A. J. Vanbuskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, F. Scheibal, Paul Scheibal, F. J. Kazda, W. Donellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. G. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short; and Robert M. Dabis and Frank C. Neal, copartners under the firm name and style of Davis & Neal, Sherman Wells, Carl J. Gerringer, George Gerringer, F. R. Schoen, A. W. Aufang, C. H. Bodecker, William L. Owen, F. H. Bergen, F. H. Godfrey and W. E. Morris, defendants and cross-complainants herein named, in the full and just sum of Three hundred (\$300) dollars, for which sum, well and truly to be paid, we bind ourselves and our and each of our heirs, executors and administrators, successors and assigns, jointly and severally firmly by these presents. [421]

SEALED with our seals and dated this 3d day of May, A. D. 1922.

The condition of this obligation is such, that whereas, there was signed and entered in the District Court of the United States for the Western District of Washington, Southern Division, on the 2d

day of May, 1922, a judgment and decree in favor of said complainant above named, and others, adjudicating their respective rights and granting to said complainant and others of the cross-complainants and defendants herein mentioned rights superior to and prior to the claimed and alleged rights of appellants herein; and whereas the said principals herein have given due and proper notice of appeal and have appealed from the said judgment and decree of the said District Court of the United States of America for the Western District of Washington, Southern Division, and whereas said petition for and the appeal itself has been allowed by said District Court,—

NOW, THEREFORE, if the said defendant-appellants herein styled principals, shall prosecute this said appeal with effect and shall pay all costs on appeal and shall satisfy and perform the judgment or orders relating to such costs on appeal made and entered by either the Circuit Court of Appeals of the said District Court upon the filing of a mandate not exceeding the amount of Three Hundred (\$300) dollars, then this obligation shall be and become void, but otherwise shall remain in full force and effect.

TACOMA MILLWORK & SUPPLY CO.

By EDWARD H. FLICK,

Agent.

[Seal] SOUTHERN SURETY COMPANY.

By C. M. REESE,

Attorney in Fact.

Approved:

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 3, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [422]

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**Assignments of Error of Tacoma Millwork Supply Company.**

Defendants, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company, through their attorneys, Flick & Paul, respectfully submit the following assignments of error upon which they rely as supporting their appeal from the judgment and decree entered on the 2d day of May, 1922, in said cause in the District Court of the United States for the Western District of Washington, Southern Division, and under which assignments of error said appellants seek reversal of the decision, judgment and decree of said trial court.

I.

That the District Court erred in refusing to



grant judgment and decree to appellants in the nature of a statutory lien for all materials prepared, as supported by the schedules attached to appellants' complaint, whether stored in warehouse distant from or at the factory, without distinction as to whether it was delivered upon the building, for the reason that under the statutes of the State of Washington in such cases made and provided the appellants [423] are entitled to a statutory material lien.

## II.

That the District Court erred in refusing to grant a labor lien for work done on material specially designed for this building, for the reason that under the statutes of the State of Washington, in such cases made and provided, appellants are entitled to a labor lien for such work, or are in any event under such statutes entitled to be placed in the position of a subcontractor for the erection of interior finishing upon the building in issue.

## III.

That the Court erred in not granting to said appellants an attorney's fee commensurate with the work involved and the amount recovered, for the reason that appellants were entitled to a statutory lien for labor and material delivered or furnished for use in construction of said building, and were entitled to have added to their judgment a reasonable attorney's fee under the said statutes.

## IV.

That the said District Court erred in giving and

granting to certain of the lien claimants a status prior to and superior to that of the appellants herein, in that the lower Court granted to those delivering material upon the premises, a lien for all of such material, and gave to appellants a lien only for materials delivered upon the premises and refused a lien to appellants for material specially constructed by way of interior finishing for the property in issue but not delivered upon said premises; and particularly erred in refusing to grant such lien since delivery was made at warehouse under special direction of or by consent of defendant Scandinavian-American Building Company, hereinafter referred to as the owner. [424]

## V.

That said District Court erred in giving to certain labor claimants or subcontractors a status prior and superior to the status of these appellants in the particular of refusing to allow these appellants a lien for labor done upon certain materials to make it more ready for erection, being particularly labor on erection, in the amount of \$6,043, and in this manner granted a laborer's lien to such laborers or to subcontractors doing laborers work upon said building who actually performed the labor upon the premises as distinguished from the performance of such labor away from the premises but upon material to be used for the construction of the building in issue, since the statutes of the State of Washington in such cases made and provided grant a lien for such labor as performed by said appel-

lants and grant no priority in the premises to parties so situated.

VI.

That the said District Court erred in granting to the said appellants a personal judgment for \$57,005.67, inclusive, of interest as appears in paragraph XXV of said decree, for materials prepared for use in construction of the building in issue, and in not granting a statutory lien for such materials upon said property for the reason that in such cases the statutes of the State of Washington provide a materialman's lien; and further erred in granting a personal judgment in the amount of \$6,043, plus interest, for certain labor performed away from the premises preparatory to erecting such material under an erection contract, and which labor did or would have facilitated the erection when placed upon the building, instead of granting a lien, for the reason that the statutes of the State of Washington, in such cases provide a laborers lien, or in any event a subcontractor's lien, and erred in giving a judgment in damages instead of judgment and lien as prayed for. [425]

VII.

That the said District Court erred in granting to the Scandinavian-American Bank rights, by reason of alleged advances under what is known as the \$600,000 mortgage, prior and superior to the rights of these appellants, excepting in so far as liens are granted to these appellants for a minor portion of their material, for the reason that the advances, so-called under the \$600,000 mortgage, as claimed

by said Bank, were made with the full knowledge that these lien claimants were told by the very officers of said Bank, who had full control of both said bank and said building company, and were likewise the officers of the building Company, that the building company had on hand \$400,000 in cash, and that the full amount of the \$600,000 mortgage would be used in the final completion of said building, whereas said officers all knew that said building company did not have a dollar on hand; and for the further reason that said building company was merely a creature of the bank or an entity constructed by the bank for its own purposes; and that said bank is estopped to claim any preference by reason of the representations made either as to advances under said \$600,000 mortgage as claimed, or because of the payment of the \$70,000 mortgage; and for the further reason that the said bank warranted said land as free and clear of encumbrances.

#### VIII.

That the said District Court erred in holding, as more fully appears from the memorandum decision filed in this cause, and dated the 31st day of March, 1922, that under the statutes of the State of Washington, relating to material and laborer's liens, the material must be furnished and delivered upon the premises, and the work must be done there, when in truth and in fact the said statutes do not provide for delivery at all but speak of the furnishing of material for use in the construction of a building. [426]

IX.

That the said District Court erred for the reason that said decision operates to take property without due process of law.

X.

That the said District Court erred for the reasons specifically set forth in the exceptions to the findings in said memorandum decision herein just referred to, and to the further exceptions filed to the judgment and decree against which these assignments of error are laid.

XI.

That said Court further erred in said judgment and decree in any and all findings or holdings which grant to any materialman, or to any claim other than the preferred class of laborer's rights superior and prior to these appellants as materialmen, and which grant any rights superior or prior to the rights of these appellants in their labor claim as recited in the schedules attached to said appellants' complaint.

XII.

That said Court further erred in not entering an order declaring that all of the material recited in the schedule attached to plaintiff's complaint was and is an integral part of the premises or property herein sought to be liened, for the reason that said appellant tendered all of said material within the time limited by their contract, that it was specially designed and worthless upon their hands, and that it was stored with the consent of the owner and retained in the storehouse away from the property



only because of the owner's convenience, and the safety of the material.

FLICK & PAUL,  
Attorneys for Defendants Tacoma Millwork Supply  
Company.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 5, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [427]

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**Citation on Appeal of Tacoma Millwork Supply  
Company.**

UNITED STATES OF AMERICA to McClintic-Marshall Company, a Corporation, Scandinavian-American Building Company, a Corporation, Scandinavian-American Bank, a Corporation, G. Wallace Simpson, Claude P. Hay as State Bank Commissioner for the State of Washington, Forbes P. Haskell as Deputy State Bank Commissioner for the State of Washington, Savage-Scofield Company, a Corporation, Puget Sound Iron & Steel Works, a Corporation, E. E. Davis & Company, a Corporation, St. Paul & Tacoma Lumber Company, a Corporation, Far West Clay Company, a Corporation, Henry Mohr Hardware Company, Inc., a Corporation, Hunt & Mottet, a Corporation, Edward Miller Cornice & Roofing Company, a Corporation, Washington Brick Lime & Sewer Pipe Company, a Corporation, Otis

Elevator Company, a Corporation, United States Machine & Engineering Company, a Corporation, Colby Star Manufacturing Company, a Corporation, Tacoma Shipbuilding Company, a Corporation, Crane Company, a Corporation, Ben Olson Company, a Corporation, H. C. Greene Doing Business as H. C. Greene Iron Works, Carl Gerbers and Fred S. Haines, Copartners Doing Business Under the Firm Name and Style of Ajax Electric Company, H. O. Matthews and Frank L. Johns, Copartners Doing Business Under the Firm Name and Style of City Lumber Agency, J. D. Mullins, Doing Business as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves, Copartners, Doing Business as P. & G. Lumber Company, Morris Kleiner Doing Business as Liberty Lumber & Fuel Company, J. A. Soderberg, Doing Business as West Coast Monumental Company, Theodore Hedlund, Doing Business as Atlas Paint Company, F. W. Madsen and Gustaf Gonasson, N. A. Hansen, A. J. Vanbuskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donellan, P. Hagstrom, Arthur Purvise, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten [428] W. Canaday, L. R. Lilly, F. McNair, Dave Chields, Ed Linberg, Joe Tikalsky, E. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterit,

Thomas S. Short; and Robert M. Davis and Frank C. Neal, Copartners Under the Firm Name and Style of Davis & Neal, Sherman Wells, Carl J. Gerringer, George Gerringer, F. R. Schoen, A. W. Aufang, C. H. Bodecker, William L. Owen, F. H. Bergen, F. H. Godfrey and W. E. Morris.

BE IT REMEMBERED that this cause came on duly and regularly for trial in this Court, and that judgment and decree herein was rendered adjudicating the rights of the various complainants, cross-complainants or defendants on the 2d day of May, 1922, and that as asserted by appellants herein, said decision adversely affects the lien and other rights claimed by said appellants, and it appearing that due and proper petition in appeal was filed on the 3d day of May, 1922, in this court by said appellants Tacoma Millwork Supply Company, a partnership consisting of Ann Davis, and R. T. Davis, Jr., as Executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, which petition was, as appears from the records of this court duly allowed on the 3d day of May, 1922, and it appearing that all things necessary to a proper appeal in said cause has been fully accomplished,—

NOW, THEREFORE, you are hereby directed to appear in the United States Circuit Court of Appeals for the 9th Circuit, sitting in San Francisco, California, within thirty days from date of

this citation and there show cause why said decision herein referred to and the decree herein entered on the 2d day of May, 1922, should not be reversed or modified.

Done in open court this 3d day of May, 1922.

EDWARD E. CUSHMAN,  
Judge. [429]

The undersigned attorneys for the parties litigant in this cause respectively appearing with their names do hereby acknowledge due service of true copy of petition and appeal, citation and assignments of error, and further acknowledge notice of proposed presentation of a short record on appeal June 12th, 1922, at 10 A. M. in the above court for settlement by his Honor Judge Cushman.

GUY E. KELLY,  
THOMAS MacMAHON,  
FRANK D. OAKLEY,

Attorneys for Scandinavian-American Bldg. Co.;  
Scandinavian-American Bank; J. P. Duke as  
State Bank Commissioner for the State of  
Wash., and Forbes P. Haskell as Deputy State  
Bank Commissioner for the State of Washing-  
ton.

WALTER S. FULTON,  
Attorney for Crane & Co.

Copy of the within received this 5th day of May,  
1922.

HARTMAN & HARTMAN,  
Attorney for W. E. Morris.  
JAMES W. REYNOLDS,  
Attorney for E. E. Davis & Co.

H. A. P. MYERS,

Attorney for H. C. Green, etc.

BOGLE, MERRITT & BOGLE,

Atty. for Otis Elevator Co.

DAVIS & NEAL,

Atty. for Washington Brick Lime & Sewer Pipe  
Co.

W. W. KEYES,

Atty. for Henry Mohr and Hunt & Mottet.

HERBERT S. GRIGGS,

L. R. BONNEVILLE,

Atty. for St. Paul & Tac. Lbr. Co.

L. R. BONNEVILLE,

Atty. for Davis & Neal.

R. S. HOLT,

Atty. for Far West Clay Co.

TEATS & TEATS,

Atty. for J. D. Mullins Bros.

B. S. GROSSCUP,

W. C. MORROW,

CHAS. A. WALLACE,

Atty. for P. & G. Lumber Co.

B. S. GROSSCUP,

W. C. MORROW,

CHAS. A. WALLACE,

Atty. for Colby Star Mfg. Co. [430]

S. F. McANALLY,

Atty. for Bodecker & Owens.

E. N. EISENHOWER,

Atty. for Ajax Electric Co.



BATES & PETERSON,

Atty. for P. S. Iron & Steel Wks.

BURKEY, O'BRIEN & BURKEY,

Atty. for City Lumber Agency.

FITCH & ARNTSON,

Atty. for Savage Scofield Co.

LOUIS J. MUSCEK,

Atty. for Liberty Lumber Co.

DeWITT M. EVANS,

Atty. for F. R. Schoen.

CHARLES BEDFORD,

Atty. for labor claims.

STILES & LATCHAM,

Atty. for Ben Olson Company and F. H. Godfrey.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 5, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [431]

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### Statement of Facts.

The following attached pages, 48 in number, with exhibits thereto attached, is proposed as the statement of facts involving the issues material to the appeal of the Tacoma Millwork Supply Company as corrected in accordance with his Honor Judge Cushman's rulings under date of July 21st, 1922.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. July 28, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [432]

**Petition for Appeal of Washington Brick, Lime &  
Sewer Pipe Company.**

To Honorable E. E. CUSHMAN, Judge:

The Washington Brick, Lime & Sewer Pipe Company, defendant and cross-complainant in the above-entitled action, feeling itself aggrieved by the decree made and entered in this case on the 2d day of May, 1922, does hereby appeal from said decree to the Circuit Court of Appeals *from* the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and it prays that its appeal be allowed, that citation issue as provided by law, and that a transcript of the record, proceedings, and papers, upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

And your petitioner further prays that the proper order touching security to be required of it to perfect its appeal, be made.

CHAS. P. LUND,  
DAVIS & NEAL,

Attorneys for Washington Brick Lime & Sewer  
Pipe Company.

1115 Fidelity Building,  
Tacoma, Wash.

The above petition granted and the appeal allowed, upon giving bond conditioned as required by law in the sum of \$500.00.

Dated July 10, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 10, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [433]

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**Assignment of Errors of Washington Brick, Lime & Sewer Pipe Company.**

Now comes the Washington Brick, Lime & Sewer Pipe Company, appellant herein, and one of the defendants and cross-complainants in the above-entitled action, and assigns the following errors as grounds for its appeal herein:

I.

The District Court erred in refusing to grant to the Washington Brick, Lime & Sewer Pipe Company, a judgment and decree awarding a statutory lien for terra cotta fabricated and shipped to Tacoma, Washington, and stored ready for delivery and use, for the reason that under the statutes of the State of Washington, in such cases, this appellant was entitled to a statutory materialman's lien therefor.

II.

The District Court erred in refusing to grant to the Washington Brick, Lime & Sewer Pipe Company, a judgment and decree awarding a statutory lien for terra cotta fabricated and stored at its plant, for the reason that under the statutes of the State of Washington, in such cases this appellant was entitled to a statutory materialman's lien therefor. [434]

## III.

The District Court erred in holding that no part of the terra cotta fabricated by this appellant was delivered to the Scandinavian-American Building Company, for the reason that the same is contrary to the evidence in the case.

## IV.

The District Court erred in holding that the title to the terra cotta fabricated by this appellant was at all times vested in it, for the reason that the same is contrary to the evidence in the case.

## V.

The District Court erred in giving and granting to all of the lien claimants (except the laborers named in paragraphs IV and V of the decree), to whom statutory liens were decreed, a status prior and superior to this appellant, for the reason that under the evidence in the case and the law of the State of Washington, this appellant was entitled to have its claim, for material fabricated, established as of the same rank as the materialmen's liens which were decreed.

## VI.

The District Court erred in holding that, under the statutes of the State of Washington, no lien can be established or decreed, except for material delivered upon the premises of the builder, for the reason that the statutes and laws, of the State of Washington, do not prescribe that delivery must be made at any specified place.

## VII.

The District Court erred in failing and refusing

to decree that the Scandinavian-American Bank and the Scandinavian-American Building Company were one corporation in equity, for the reason that under the evidence in the case, [435] the corporations were identical.

VIII.

The District Court erred in not allowing to this appellant an attorney's fee, in at least the sum of 5,800 dollars as a part of the judgment in its favor.

IX.

The District Court erred in granting a judgment in favor of J. P. Duke, as Supervisor of Banks for the State of Washington, on account of moneys paid in procuring the assignment of the mortgage, referred to in paragraph thirty-four of the judgment, in the sum of \$72,366.35, and interest amounting to \$4,293.73, for the reason that such judgment is contrary to the law and the evidence.

X.

The District Court erred in granting a judgment in favor of J. P. Duke, as Supervisor of Banks for the State of Washington, on account of moneys advanced by the Scandinavian-American Bank to and for the benefit of the Scandinavian-American Building Company, in the sum of \$232,094.42, and interest amounting to \$19,136.62, for the reason that such judgment is contrary to the law and the evidence.

XI.

The District Court erred in denying appellant's claim of lien, for the reason that the judgment



operates to deprive this appellant of its property without due process of law.

CHAS, P. LUND,  
DAVIS & NEAL,

Solicitors for the Washington Brick, Lime &  
Sewer Pipe Company.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jul. 10, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [436]

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**Bond on Appeal of Washington Brick, Lime &  
Sewer Pipe Company.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, Washington Brick, Lime & Sewer Pipe Company, as principal, and Hartford Accident & Indemnity Company, a corporation authorized to do a surety business in the State of Washington, as surety, acknowledge ourselves to be jointly indebted to the McClintic-Marshall Company, a corporation, Appellee in the above case, and the Scandinavian-American Building Co., a corporation, the Scandinavian-American Bank, a corporation, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Co., G. Wallace Simpson, P.

Claude Hay, as State Bank Commissioner for the State of Washington, Forbes P. Haskell, as Deputy State Bank Commissioner for the State of Washington, Savage-Seofield Company, a corporation, Puget Sound Iron & Steel Works, a corporation, E. E. Davis & Company, a corporation, St Paul & Tacoma Lumber Company, a corporation, Far West Clay Company, a corporation, Henry Mohr Hardware Company, Inc., a corporation, Hunt & Mottet, a corporation, Edward Miller Cornice & Roofing Company, a corporation, Otis Elevator Company a corporation, United States Machine & Engineering Co., a corporation, Crane Company, a corporation, Ben Olson Co., a corporation, H. C. Greene, doing business as H. C. Greene Iron Works, Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company, S. O. Matthews and [437] Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency, J. D. Mullins, doing business as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company, Morris Kleiner, doing business as Liberty Lumber & Fuel Company, J. A. Soderberg, doing business as West Coast Monumental Co., Theodore Hedlund, doing business as Atlas Paint Col, F. W. Madsen, Gustaf Jonasson, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Ray Farnsworth, C. B. Dustin, L. J.

Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe. Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswald, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, and Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal, Sherman Wells, Carl J. Gerringer, George Gerringer, F. R. Schoen, A. W. Aufang, C. H. Boedecker, William L. Owen, F. N. Bergren, F. H. Godfrey, and W. E. Morris, John P. Duke, as Supervisor of Banking, Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company, Forbes P. Haskell, as Assistant Supervisor of Banking, defendants and cross-complainants in the above-entitled case, in the sum of Five Hundred (\$500) Dollars.

CONDITIONED that, whereas, on the 2d day of May, 1922, in the District Court of the United States for the Western District [438] of Washington, in a suit pending in that court wherein the McClintic-Marshall Company was complainant, and the Scandinavian-American Building Company, a corporation, and Washington Brick Lime & Sewer Pipe Company, together with other persons and corporations, were defendants, numbered on the Equity Docket as No. 117-E, a decree was rendered from which decree the Said Washington Brick Lime & Sewer Pipe Company has obtained an appeal and filed a copy thereof in the office of the Clerk of court, to reverse the said decree, and a citation directed to the said McClintic-Marshall

Company and to all of the defendants and cross-complainants, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, California, within thirty (30) days from the 7th day of July, 1922.

NOW, if the said Washington Brick Lime & Sewer Pipe Company shall prosecute its appeal to effect an answer all damages and costs if it fail to make its plea good, then the above obligation to be void, otherwise to remain in full force and effect.

Dated this 10th day of July, 1922.

WASHINGTON BRICK, LIME & SEWER  
PIPE CO.

By CHAS P. LUND,  
DAVIS & NEAL,  
Its Attorneys,  
(Principal).

HARTFORD ACCIDENT & INDEMNITY  
COMPANY,

By JOHN F. LYON,  
Attorney in Fact,  
(Surety).

[Corporate Seal] Attest: L. E. MURPHY.

The foregoing bond approved July 10, 1922.

EDWARD E. CUSHMAN,  
Judge. [439]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 10, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [440]

**Citation of Washington Brick, Lime & Sewer Pipe Company.**

UNITED STATES OF AMERICA to McClintic-Marshall Company, a corporation, Scandinavian-American Building Company, a corporation, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Co., G. Wallace Simpson, P. Claude Hay as State Bank Commissioner for the State of Washington, Forbes P. Haskell as Deputy State Bank Commissioner for the State of Washington, Savage-Scofield Company, a corporation, Puget Sound Iron & Steel Works, a corporation, E. E. Davis & Company, a corporation, St. Paul & Tacoma Lumber Co., a corporation, Far West Clay Company, a corporation, Henry Mohr Hardware Company, Inc., a corporation, Hunt & Mottet, a corporation, Edward Miller Cornice & Roofing Company, a corporation, Washington Brick, Lime & Sewer Pipe Company, a corporation, Otis Elevator Company, a corporation, United States Machine & Engineering Co., a corporation, Crane Company, a corporation, Ben Olson Co., a corporation, H. C. Greene, doing business as H. C. Greene Iron Works, Carl Gebbers and



Fred S. Haines, copartners, doing business under the firm name and style of Ajax Electric Company, S. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency, J. D. Mullins doing business as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company, Morris Kleiner, doing business as Liberty Lumber & Fuel Company, J. A. Soderberg, doing business as West Coast Monumental Co., Theodore Hedlund, doing business as Atlas Paint Co., F. W. Madsen, Gustaf Jonasson, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, and Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal, Sherman Wells, Carl J. Geringer, George Geringer, F. R. Schoen, A. W. Anfang, C. H. Boedecker, William L. Owen, F. N. Bergen, F. H. Godfrey, and W. E. Morris, John P. Duke, as Supervisor of Banking, Forbes P. Haskell, as Receiver of

Scandinavian-American Building Company,  
Forbes P. Haskell, as Assistant Supervisor of  
Banking, GREETINGS:

YOU ARE HEREBY NOTIFIED that in a certain case in equity in the United States District Court, in and for the Western District of Washington, Southern Division, wherein McClintic-Marshall Company, a corporation, is complainant, and the Washington Brick, Lime & Sewer Pipe Company, a corporation, et al., are defendants and cross-complainants, in which case decree was rendered by the said court on the 2d day of May, 1922, an appeal has been allowed the Washington Brick, Lime & Sewer Pipe Company, cross-complainant therein to the Circuit Court of Appeal.

You are hereby cited and admonished to be and appear in said Circuit Court of Appeal *from* the Ninth Circuit, sitting in San Francisco, California, within thirty days from the date of this citation, and there show cause if any there be why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Done in open court this 10th day of July, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 10, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [441]

**Notice of Filing Assignment of Errors and Lodgment of Statement of Facts of Washington Brick, Lime & Sewer Pipe Company.**

To Hayden, Langhorne & Metzger, Attorneys for Plaintiff and to All Attorneys for Defendants.

TAKE NOTICE that the Washington Brick, Lime & Sewer Pipe Company on the 10th day of July, 1922, filed with the Clerk of said court, its assignment of errors on appeal to the Circuit Court of Appeals of the Ninth Circuit, and that on the same day the said Company lodged with said clerk its proposed statement of the testimony on its said appeal; and take notice, further, that on Friday, the 21st day of July, 1922, at ten o'clock in the forenoon, or as soon thereafter as the matter can be heard, the undersigned will apply to the said Court to approve said statement.

DAVIS & NEAL,

CHARLES P. LUND,

Attorneys for Washington Brick, Lime & Sewer Pipe Co.

1115 Fidelity Bldg.,

Tacoma, Washington.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 21, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [442]

**Admission of Service of Citation, Notice of Filing  
Assignment of Errors and Lodgment of State-  
ment of Facts.**

Receipt of copy of Citation, Notice of Filing As-  
signment of Errors and Lodgment of Statement of  
Facts is admitted this 10th day of July, 1922.

WALTER M. HARVEY,

Per N. GROSS,

Attorneys for Edward Miller Cornice & Roofing  
Company.

J. F. FITCH,

R. S. HOLT,

Attys. for Savage-Scofield Co.

TEATS, TEATS & TEATS,

Attys. for J. D. Mullins Bros.

BATES & PETERSON,

Attys. for Puget Sound Iron & Steel Works.

H. S. GRIGGS,

L. R. BONNEVILLE,

Attys. for St. Paul & Tac. Lbr.

W. W. KEYES,

Atty. for Henry Mohr Hdwe. Co. and Hunt &  
Mottet.

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Atty. for H. C. Greene Iron Wks.

BURKEY, O'BRIEN & BURKEY,

Atty. for City Lumber Agency.

LOUIS J. MUSCEK,

Atty. for Liberty Lumber & Fuel Co.

A. O. BURMEISTER,

Atty. for U. S. Machine & Engineering Co.

DeWITT M. EVANS,

Atty. for F. R. Shoen.

D. R. HOPPE,

Atty. for Atlas Paint Co.

S. F. McANALLY,

Atty. for C. H. Boedecker and William L. Owen.

CHAS. BEDFORD,

Atty. for N. A. Hansen, et al.

HAYDEN, LANGHORNE & METZ-  
GER,

Attorneys for McClintic-Marshall Company.

KELLY & MacMAHON and

F. D. OAKLEY,

Attorneys for Scandinavian-American Bldg. Co.  
Scandinavian-American Bank.

FLICK & PAUL,

Attorneys for Ann Davis, et al., Doing Business as  
Tacoma Millwork Supply Company.

PETERS & POWELL,

Attorneys for E. E. Davis & Co.

R. S. HOLT,

Attorney for Far West Clay Company.

GROSSCUP & MORROW,

Attorney for Colby Star Mfg. Co. and P. & G. Lum-  
ber Co.

E. N. EISENHOWER,

Atty. for Ajax Electric Co.

BOGLE, MERRITT & BOGLE,

Atty. for Otis Elevator Co.



Copy of the within received this 10th day of July,  
1922.

HARTMAN & HARTMAN,

Atty. for W. W. Morris.

W. S. FULTON,

Atty. for Crane Co.

STILES & LATCHAM,

Atty. for Ben Olson Co.

STILES & LATCHAM,

Atty. for F. H. Godfrey.

DAVIS & NEAL,

L. R. BONNEVILLE,

Attys. for Davis & Neal.

H. A. P. MYERS,

Attorney for H. C. Greene Iron Wks. [443]

[Indorsed]: Filed in the United States District  
Court, Western District of Washington, Southern  
Division. Jul. 21, 1922. F. M. Harshberger, Clerk.  
By Ed M. Lakin, Deputy. [444]

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### **Petition for Appeal of Ben Olson Company.**

Defendant, Ben Olson Company, a corporation,  
through its attorneys, Stiles & Latcham, feeling  
itself aggrieved, does hereby appeal from a judg-  
ment and decree signed and entered in the fore-  
going cause on the 2d day of May, 1922, in the Dis-  
trict Court of the United States for the Western  
District of Washington, Southern Division, and  
from each and every part thereof, and does here-  
with present its several assignments of error, and

does hereby pray the allowance of said appeal, and that so much and such portions of the record, the statement of facts and exhibits as may be necessary to execute said appeal be forwarded from said court by the Clerk of the District Court of the United States for the Western District of Washington, Southern Division, duly certified and authenticated under the seal of the said trial court, to the Circuit Court of Appeals for the 9th Circuit.

STILES & LATCHAM,

Attorneys for Defendant, Ben Olson Co.

Appeals allowed: Bond \$1000.00.

Dated June 15, 1922.

EDWARD E. CUSHMAN,

District Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 15, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [445]

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**Assignments of Error of Ben Olson Company.**

Defendant, Ben Olson Company, a corporation, through its attorneys, Stiles & Latcham, respectfully submits the following assignments of error upon which it will reply as supporting its appeal from the judgment and decree entered on the 2d day of May, 1922, in said cause in the District Court of the United States for the Western District of Washington, Southern Division, and under which assignments of error said appellant seeks reversal

of the decision, judgment and decree of said trial Court.

### I.

This District Court erred in refusing to grant its judgment and decree to appellant in the nature of a statutory lien for all materials procured to be purchased and stored ready for delivery and use as supported by the evidence of the cause, whether stored in warehouse or in appellant's shop, without regard to whether it was delivered at the building or not, for the reason that under the statutes of the State of Washington, in such cases made and provided, the appellant was entitled to a statutory Contractor's Lien.

### II.

The District Court erred in refusing to grant a lien for work done upon and materials furnished at the building, for the reason that under the statutes of the State of Washington, in such cases made and provided, appellant was entitled to a lien for such work and material furnished. [446]

### III.

The District Court erred in not granting to said appellant an attorney's fee commensurate with the work involved and the amount recovered, for the reason that appellant was entitled to a statutory lien for labor done and material delivered or furnished for the use in construction of said building, and was entitled to have added to its judgment a reasonable attorney's fee under the said statutes.

### IV.

The District Court erred in giving and granting

to certain of the lien claimants a status prior to and superior to that of the appellant herein, in that the lower court granted to those delivering material upon the premises a lien for all of such material, and gave to appellant no lien whatever therefor; and refused a lien to appellant for material specially procured for the building being constructed, but not delivered upon the premises; and particularly erred in refusing to grant such lien since delivery was made at warehouse and shop of appellant.

V.

The District Court erred in granting to the said appellant a reasonable judgment for \$14,422.03, inclusive of interest, as appears in Paragraph XXVI of said decree, on account of its contract and for materials and labor furnished in the construction of the building, in issue, and in not granting a statutory lien for such judgment upon said real property for the reason that in such cases the statutes of the State of Washington provide a Contractor's Lien.

VI.

That the said District Court erred in granting to the Scandinavian-American Bank rights, by reason of alleged advances under what is known as the \$600,000 mortgage, prior and superior to the rights of this appellant, for the reason that the advances, so called under the \$600,000 mortgage, as claimed by said bank, were made [447] with the full knowledge that this lien claimant was told by the very officers of said Bank, who had full control

of both said Bank and said Building Company, and were likewise the officers of the Building Company, that the Building Company had on hand \$400,000 in cash, and that the full amount of the \$600,000 mortgage would be used in the final completion of said building; whereas said officers all knew that said Building Company did not have a dollar on hand; and for the further reason that said Building Company was merely a creature of the bank or an entity constructed by the bank for its own purposes; and that said bank is estopped to claim any preference by reason of the representations made, either as to advances under said \$600,000 mortgage as claimed, or because of the payment of the \$70,000 mortgage; and for the further reason that the said bank warranted said lands as free and clear of encumbrances.

#### VII.

That the said District Court erred in holding, as more fully appears from the memorandum decision filed in this cause, and dated the — day of April, 1922, that under the statutes of the State of Washington, relating to material and laborer's liens, the material must be furnished and delivered upon the premises, and the work must be done there, when in truth and in fact the said statutes do not provide for delivery at all but speak of the furnishing of material for use in the construction of a building.

#### VIII.

The District Court erred in its failure and refusal to decree that the Scandinavian-American Bank and the Scandinavian-American Building Company were one corporation in equity, and to allow appel-



lant's judgment and the rejected part of its claims as a claim allowed against the assets and property of said bank in the hands of John P. Duke, Supervisor of Banks; although in its decision of the case, and in Paragraph XXXVI of the Decree [448] herein, it was found and adjudged that said Scandinavian-American Building Company of Tacoma, for the purpose of providing the said bank with suitable banking quarters and was at all times subject to the control of and controlled by said bank.

IX.

The District Court erred in entering judgment in favor of John P. Duke, as Supervisor of Banking in Paragraph XXXVII of the Decree herein, for \$72,366.35, and interest, on account of moneys paid by him in procuring an assignment of a mortgage on the building premises; for the reason that the payment of such moneys was merely the payment of the bank's own debt.

X.

The District Court erred in entering judgment in favor of John P. Duke, as Supervisor of Banking, against the Scandinavian-American Building Company for \$232,094.42, and interest, by Paragraph XXVIII of the Decree herein, and in giving to said judgment a status equal in rank with the judgment entered in favor of appellant, for the reason that said sum represented moneys alleged to have been advanced and paid by the Scandinavian-American Bank for labor and materials used in the construction of said building, which building was being constructed by said bank, through its agent, said Scan-

dinavian-American Building Company, after it had contracted with appellant for its labor and materials and had, to the knowledge of the bank represented that it had \$400,000 in money on hand for the construction of said building and that it also had negotiated its \$600,000 mortgage bonds, the proceeds of which it would have for construction, none of which was true, as found in Paragraph XXXIII of said Decree; and, further, said Court erred in entering judgment because the court had no jurisdiction to render such a judgment in a lien foreclosure case.

STILES & LATCHAM,

Attorneys for Defendant, Ben Olson Co. [449]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 15, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [450]

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**Citation of McClintic-Marshall Company.**

UNITED STATES OF AMERICA to McClintic-Marshall Company, a Corporation, Scandinavian-American Building Company, a Corporation, Scandinavian-American Bank, a Corporation, Ann Davis and R. T. Davis, Jr., as Executors of the Estate of R. T. Davis, Deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, Copartners Doing Business Under the Name and

Style of Tacoma Millwork Supply Company, G. Wallace Simpson, Claude P. Hay as State Bank Commissioner for the State of Washington, Forbes P. Haskell as Deputy State Bank Commissioner for the State of Washington, Savage-Scofield Company, a Corporation, Puget Sound Iron & Steel Works, a Corporation, E. E. Davis & Company, a Corporation, St. Paul & Tacoma Lumber Company, a Corporation, Far West Clay Company, a Corporation, Henry Mohr Hardware Company, Inc., a Corporation, Hunt & Mottet, a Corporation, Edward Miller Cornice & Roofing Company, a Corporation, Washington Brick, Lime & Sewer Pipe Company, a Corporation, Otis Elevator Company, a Corporation, United States Machine & Engineering Company, a Corporation, Colby Star Manufacturing Company, a Corporation, Tacoma Shipbuilding Company, a Corporation, Crane Company, a Corporation, H. C. Greene, Doing Business as H. C. Greene Iron Works, Carl Gerbers and Fred S. Haines, Copartners Doing Business Under the Firm Name and Style of Ajax Electric Company, H. O. Matthews and Frank L. Johns, Copartners Doing Business Under the Firm Name and Style of City Lumber Agency, J. D. Mullins, Doing Business as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company, Morris Kleiner, Doing Business as Liberty Lumber & Fuel Company, J. A. Soderberg, Doing Business as West

Coast Monumental Company, Theodore Hedlund [451] Doing Business as Atlas Paint Company, F. W. Madsen and Gustaf Jonasson, N. A. Hansen, A. J. Vanbuskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Schields, Ed. Lindberg, Joe Tilkalsky, E. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short; and Robert M. Davis and Frank C. Neal, Copartners Under the Firm Name and Style of Davis & Neal, Sherman Wells, Carl J. Gerringer, George Gerringer, F. R. Schoen, A. W. Aufang, C. H. Boedecker, William L. Owen, F. H. Bergen, F. H. Godfrey and W. E. Morris,—

BE IT REMEMBERED, that this cause came on duly and regularly for trial in this court, and that judgment and decree herein was rendered adjudicating the rights of the various complainants, cross-complainants and defendant on the 2d day of May, 1922, and that, as asserted by appellant herein, said decision adversely affect the lien and other rights claimed by said appellant, and it appearing that due and proper petition in appeal was filed on the 15 day of June, 1922, in this court by said appellant, Ben Olson Company, a corporation, which petition was, as appears from the records of this court,

duly allowed on the 15th day of June, 1922, and it appearing that all things necessary to a proper appeal in said cause has been fully accomplished,—

NOW, THEREFORE, you are hereby directed to appear in the United States Circuit Court of Appeals for the 9th Circuit, sitting in San Francisco, California, within thirty days from date of [452] this citation and there show cause why said decision herein referred to and the decree herein entered on the 2d day of May, 1922, should not be reversed or modified.

Done in open court this 15th day of June, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 15, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [453]

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**Bond on Appeal of Ben Olson Company.**

KNOW ALL MEN BY THESE PRESENTS: That we, the Ben Olson Company, a corporation, as principal, and the Fidelity & Deposit Company of Maryland, a corporation, organized under the laws of Maryland, and qualified to become surety on judicial bonds in the State of Washington, are held and firmly bound unto the McClintic-Marshall Company, a corporation, and all other appellees in the above-entitled cause, in the sum of Five Hundred Dollars to be paid to the said obligees,



their respective successors, heirs and assigns; to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this 28th day of September, 1922.

Nevertheless the condition of the above obligation is such, that, WHEREAS, the above-named Ben Olson Company, a defendant in the above-entitled cause has appealed to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment entered in the above-entitled cause in so far as the same denied certain relief to said defendant.

NOW, THEREFORE, if the above-named defendant shall prosecute said appeal to effect, and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void; but otherwise it shall be and remain in full force and effect. [454]

WITNESS our seals and names hereto affixed the day and year above written.

BEN OLSON COMPANY,

By O. B. OLSON,

President.

FIDELITY & DEPOSIT COMPANY OF  
MARYLAND.

[Corporate Seal]

By H. T. HANSEN,

Attorney in Fact.

Approved, October 9, 1922.

EDWARD E. CUSHMAN,

Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 9, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [455]

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**Notice of Filing Assignment of Errors and Lodging  
Statement of Facts of Ben Olson Company.**

To Hayden, Langhorne & Metzger, Attorneys for Complainant, and to Attorneys for All Defendants Appearing.

TAKE NOTICE, that Ben Olson Company, on the 15th day of May, 1922, filed with the Clerk of the said Court its assignment of errors on appeal to the Circuit Court of Appeals, of the Ninth Circuit; and that on the same day said Ben Olson Company lodged with said Clerk its proposed statement of the testimony, on its said appeal; and take notice further that on Friday, the 30th day of June, 1922, at 10 o'clock in the forenoon, or as soon thereafter as the matter can be heard, the undersigned will apply to the said Court to approve said statement.

Respectfully,

STILES & LATCHAM,

Attorneys for Ben Olson Company. [456]

Copies of the foregoing notice of filing of assignment of errors and lodgment of statement of testimony and time and place of hearing, and of

appellant Ben Olson Company's citation on appeal admitted this 15th day of June, 1922.

HAYDEN, LANGHORNE & METZGER,  
Attorneys for McClintic-Marshall Company.

KELLY, McMAHON & F. D. OAKLEY,  
Attorneys for Scandinavian-American Building  
Company and Forbes P. Haskell, Receiver of  
Scandinavian-American Building Company.

KELLY, McMAHON & F. D. OAK-  
LEY,

Attorneys for Scandinavian-American Bank of Ta-  
coma, John P. Duke as Supervisor of Banks,  
Successor of Claude P. Hay, as State Bank  
Commissioner.

FLICK & PAUL,

Attorneys for Ann Davis, et al., Copartners Under  
the Name of Tacoma Millwork Supply Co.

FITCH & ARNTSON,

Attorneys for Savage-Schofield Company

BATES & PETERSON,

Attorneys for Puget Sound Iron & Steel Works.

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Attorneys for E. E. Davis & Company.

H. S. GRIGGS,

Attorneys for St. Paul & Tacoma Lumber Co.

R. S. HOLT,

Attorney for Far West Clay Company.

W. W. KEYES,

Attorney for Henry Mohr Hardware Company.

DAVIS & NEAL,

Attorneys for Washington Brick, Lime & Sewer Co.

BOGLE, MERRITT & BOGLE,  
Attorneys for Otis Elevator Company.

GROSSCUP & MORROW,  
Attorneys for Colby Star Manufacturing Co.

WALTER S. FULTON,  
Attorney for Crane Company.

H. A. P. MYERS,  
Attorneys for H. C. Greene, Doing Business as H.  
C. Greene Iron Works.

E. N. EISENHOWER,  
Attorney for Carl Gerbers and Fred S. Haines,  
Copartners Under the Name of Ajax Electric  
Company.

BURKEY, O'BRIEN & BURKEY,  
Attorneys for H. O. Matthews and Frank L. Johns,  
Doing Business as City Lumber Agency.

TEATS, TEATS & TEATS,  
Attorneys for J. D. Mullins, Doing Business as  
J. D. Mullins Bros.

GROSSCUP & MORROW,  
Attorneys for C. H. Graves, Emma Graves and  
S. J. Pritchard, Doing Business as Copartners  
Under the Firm Name of P. & G. Lumber  
Company.

LOUIS J. MUSCEK,  
Attorney for Morris Kleiner, Doing Business as  
Liberty Lumber & Fuel Company.

CHARLES BEDFORD,  
Attorney for N. A. Hansen, and 36 Other Defend-  
ants.

L. R. BONNEVILLE,

Attorney for Robert M. Davis and Frank C. Neal,  
Doing Business as Davis & Neal.

DE WITT M. EVANS,

Attorney for F. R. Schoen. [458]

S. F. McANALLY,

Attorney for C. H. Boedecker and William M.  
Owen.

STILES & LATCHAM,

Attorneys for F. H. Godfrey.

HARTMAN & HARTMAN,

Attorneys for W. E. Morris.

WALTER M. HARVEY, per G.

Attorney for Edward Miller Cornice & Roofing  
Company.

W. W. KEYES,

Attorney for Hunt & Mottet, a Corporation.

[Indorsed]: Filed in the United States District  
Court, Western District of Washington, Southern  
Division. Jul. 6, 1922. F. M. Harshberger, Clerk.  
By Alice Huggins, Deputy. [459]

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**Petition for Appeal of J. P. Duke.**

J. P. Duke, as Supervisor of Banks of the State  
of Washington, and as successor in office to the  
defendant, Claude P. Hay, as State Bank Commis-  
sioner of the State of Washington, Forbes P. Has-  
kell, Jr., as Special Deputy Supervisor of Banks  
of the State of Washington, and Scandinavian-  
American Bank of Tacoma, a corporation, feeling



themselves aggrieved by the decree made and entered in the above-entitled cause on the 2d day of May, 1922, do hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reason specified in their assignment of errors, which is filed herewith, and they pray that their appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit. And petitioners pray that the proper order touching the security to be required of them to perfect their appeal be made.

KELLY & MacMAHON,  
F. D. OAKLEY,  
Attorneys for said Petitioners.

The foregoing petition for appeal is hereby allowed this 22d day of July, 1922, upon giving bond conditioned as required by law in the sum of \$500.00.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 22, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [460]

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**Bond on Appeal of J. P. Duke.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, J. P. Duke, as Supervisor of Banks of

the State of Washington, and as successors in office to the Defendant Claude P. Hays, as State Bank Commissioner of the State of Washington, Forbes P. Haskell, Jr., as Special Deputy Supervisor of Banks of the State of Washington, and Scandinavian-American Bank of Tacoma, a corporation, as principals, and the National Surety Company of New York, a corporation, organized under the laws of the State of New York, and authorized to transact the business of Surety in the State of Washington, as Surety, are held and firmly bound unto McClintic-Marshall Company, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant, Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Co., G. Wallace Simpson, Savage-Scofield Company, a corporation, Puget Sound Iron & Steel Works, a corporation, E. E. Davis & Company, a corporation, St. Paul & Tacoma Lumber Company, a corporation, Far West Clay Company, a corporation, Henry Mohr Hardware Company, Inc., a corporation, Hunt & Mottet, a corporation, Edward Miller Cornice & Roofing Company, a corporation, Washington Brick, Lime & Sewer Pipe Company, a corporation, Otis Elevator Company, a corporation, United States Machine & Engineering Co., a corporation, Crane Company, a corporation, Ben Olson Co., a corporation, H. C. Greene doing business as H. C. Greene Iron Works, Carl Gebbers and Fred S.

Haines, copartners doing business under the firm name and style of Ajax Electric Company, S. O. Matthews and Frank L. Johns, copartners [461] doing business under the firm name and style of City Lumber Agency, J. D. Mullins doing business as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves, copartners doing business as J. & G. Lumber Company, Morris Kleiner, doing business as Liberty Lumber & Fuel Company, J. A. Soderberg, doing business as West Coast Monumental Co., Theodore Hedlund, doing business as Atlas Paint Co., F. W. Madsen, Gustaf Jonasson, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed. Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, E. A. Fetterly, Thomas S. Short, and Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal, Sherman Wells, Carl J. Gerringer, George Gerringer, F. R. Schoen, A. W. Aufang, C. H. Boedecker, William L. Owen, F. N. Bergen, F. H. Godfrey, Seattle Hardware Company, a corporation, Frederick Webber and O. S. Larson, and W. E. Morris, Colby Star Manufacturing Company, a corporation, Tacoma Shipbuilding Company, a corpora-

tion, Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company, a corporation, the defendants above named, in the full and just sum of Five Hundred Dollars (\$500.00); to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and [462] successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 31st day of July, 1922.

THE CONDITION of this obligation is such, that whereas, in the above-named action there was signed and entered in the District Court of the United States, for the Western District of Washington, Southern Division, on the 2d day of May, 1922, a judgment and decree, in favor of the complainant above named and others adjudging their respective rights and granting to said complainant and others of the cross-complainants and defendants herein mentioned, rights superior to and prior to the claimed and alleged rights of appellant herein, and whereas the said principal herein has obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and filed a copy thereof in the office of the Clerk of the court to reverse the said decree and a citation directed to the said complainant and the other defendants and cross-complainants herein named admonishing them and each of them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held

in the City of San Francisco, in the State of California, within thirty days from July 31, 1922.

Now, if the said J. P. Duke, as Supervisor of Banks of the State of Washington, and as successor in office to the defendant Claude P. Hay, as State Bank Commissioner of the State of Washington, Forbes P. Haskell, Jr., as Special Deputy Supervisor of Banks of the State of Washington, and Scandinavian-American Bank of Tacoma, a corporation, shall prosecute their appeal to effect and answer all damages and costs if they fail to [463] make their plea good, then the above obligation to be void, else to remain in full force and virtue.

JOHN P. DUKE,  
Supervisor of Banks of the State of Washington,  
etc.

FORBES P. HASKELL, Jr.,  
Special Deputy Supervisor of Banks of the State  
of Washington.

SCANDINAVIAN-AMERICAN BANK OF  
TACOMA.

By GUY E. KELLY and  
THOMAS MacMAHON,  
Its Attorneys.

NATIONAL SURETY COMPANY OF  
NEW YORK.

By FREDERIC D. METZGER,  
Resident Vice-President.



[Corporate Seal]

By W. B. GILHAM,  
Resident Assistant Secretary.

Approved this 31st day of July, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 31, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [4631½]

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### **Assignment of Errors of J. P. Duke.**

J. P. Duke, as Supervisor of Banks of the State of Washington, and as successor in office to the defendant, Claude P. Hay, as State Bank Commissioner of the State of Washington, Forbes P. Haskell, Jr., as Special Deputy Supervisor of Banks of the State of Washington, and Scandinavian-American Bank of Tacoma, a corporation, respectfully submit and make the following assignment of errors in the above-entitled cause upon which they rely as supporting their appeal from the judgment and decree made and entered in the above-entitled cause on the 2d day of May, 1922, and under which assignment of errors said appellants seek reversal of the decision, judgment and decree of said trial court.

#### I.

The Court erred in holding that the mortgage referred to in paragraph XXXIV of the decree known

as the Penn Mutual Life Insurance Company mortgage executed by J. E. Chilberg and wife to said Company and subsequently purchased by John P. Duke, as Supervisor of Banks of the State of Washington and assigned to him as such State officer, is not a valid mortgage constituting a first lien upon the real property described in their cross-complaint and described in said Decree and prior to any and all other claims and liens, for the reason that said mortgage is a valid mortgage constituting a lien upon the premises for a period of several years prior to the erection of any building thereon upon which lien claims are asserted in this action. Said mortgage has never been paid and now is legally owned by a state official in the process of liquidating the affairs of the insolvent bank. [464]

II.

The Court erred in refusing to enter a Decree as prayed for in these appellants' cross-complaint foreclosing the so-called Penn Mutual Life Insurance Company mortgage as a lien on the premises of the Scandinavian-American Building Company prior to any and all other liens and claims.

III.

The Court erred in holding that the taking of an assignment of the said Penn Mutual Life Insurance Company mortgage by J. P. Duke, as Supervisor of Banks of the State of Washington, operated as a payment of and to discharge said mortgage and that by reason thereof and for want of equity appellants' cross-complaint should be dismissed, for the reason that the said J. P. Duke was

not an agent or representative of the Bank but was acting in his official capacity as an officer of the State of Washington in the process of liquidating the affairs of said Bank as provided by the laws of said State, and was authorized and directed by the Superior Court of the State of Washington in and for the County of Pierce, in charge of liquidation of said Bank, to purchase said mortgage and take an assignment thereof for the best interests of the creditors of said bank.

#### IV.

The Court erred in holding the lien claims of McClintic-Marshall Company, Tacoma Millworks Supply Company, E. E. Davis & Company, H. C. Greene, Mullins Bros., Crane Company, Far West Clay Company, Savage-Scofield Company, and the other lien claims and claims allowed in said Decree, or any of them, prior in right to the Penn Mutual mortgage, for the reason that said mortgage was a valid and binding lien upon the premises for a number of years prior to the initiation of any other lien right [465] or claim.

#### V.

The Court erred in ordering the application of any part of the proceeds of the sale of the premises and property of the Scandinavian-American Building Company to the payment of any liens and claims prior to the application thereof to the payment of the principal and interest of the said Penn Mutual Life Insurance Company mortgage to the said J. P. Duke, as Supervisor of Banks.

## VI.

The Court erred in holding that the mortgage for \$600,000.00, known as the G. Wallace Simpson mortgage, and referred to in Paragraph XXXVI of the Decree, executed by the Scandinavian-American Building Company to G. Wallace Simpson, and afterwards assigned to the Scandinavian-American Bank of Tacoma is not a valid mortgage constituting a lien upon the real property and premises of the Building Company and prior to any and all other liens and claims, except the so-called Penn Mutual Life Insurance Company mortgage, for the reason that said mortgage was a valid mortgage of record prior to the initiation of any right or claim of lien on the part of any lien claimants in this action.

## VII.

The Court erred in refusing to enter a Decree as prayed for in appellant's cross-complaint foreclosing the so-called Simpson mortgage as a lien on the premises of the Scandinavian-American Building Company, prior to *any all* other liens [466] and claims except the so-called Penn Mutual Life Insurance Company mortgage.

## VIII.

The Court erred in holding the lien claims of McClintic-Marshall Company, Tacoma Millworks Supply Company, E. E. Davis & Company, Far West Clay Company, and Savage-Scofield Company and the other claims and lien claims allowed in said Decree, or any of them, prior to the right of the so-called Simpson mortgage, for the reason

that said mortgage was a valid and binding lien upon the premises of the Scandinavian-American Building Company prior to the initiation of any other lien rights or claims other than the so-called Penn Mutual mortgage, and that all of said lien claimants had actual knowledge of the existence of said mortgage prior to the time of delivery of any material or the performance of any labor on the premises of the Scandinavian-American Building Company.

#### IX.

The Court erred in ordering the application of any part of the proceeds of the sale of the premises and property of the Scandinavian-American Building Company to the payment of any liens and claims prior to the application thereof to the payment of the principal and interest of the said Simpson mortgage, except only the so-called Penn Mutual mortgage.

#### X.

The Court erred in refusing to enter a Decree as prayed for in these appellants' second cross-complaint establishing a lien upon the real property of the Scandinavian-American Building [467] Company in the nature of a purchase money mortgage which arose out of an agreement by which the Scandinavian-American Building Company agreed to deliver to the Scandinavian-American Bank of Tacoma, bonds of the par value of \$350,000.00, and secured by a second mortgage on the premises involved in this action, for the reason that the title to said lots and premises was transferred by the



Bank to the Building Company without any consideration other than the agreement to deliver the above bond within four months from February 20th, 1920.

XI.

The Court erred in holding any lien claims or other claims prior to the so-called purchase money mortgage other than the Penn-Mutual mortgage.

WHEREFORE the above-named appellants pray that said Decree may be reversed and that said Court be directed to dismiss this action or to enter such Decree as the Court may direct, as equitable herein.

KELLY & MacMAHON,  
F. D. OAKLEY,

Attorneys for Supervisor of Banks of the State of  
Washington, et al.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 22, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [468]

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**Citation of J. P. Duke.**

UNITED STATES OF AMERICA to McClintic-Marshall Company, a Corporation, Ann Davis, and R. T. Davis, Jr., as Executors of the Estate of R. T. Davis, Deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis,

Copartners Doing Business Under the Name and Style of Tacoma Millwork Supply Co., G. Wallace Simpson, Savage-Scofield Company, a Corporation, Puget Sound Iron & Steel Works, a Corporation, E. E. Davis & Company, a Corporation, St. Paul & Tacoma Lumber Co., a Corporation, Far West Clay Company, a Corporation, Henry Mohr Hardware Company, Inc., a Corporation, Hunt & Mottet, a Corporation, Edward Miller Cornice & Roofing Company, a Corporation, Washington Brick Lime & Sewer Pipe Company, a Corporation, Otis Elevator Company, a Corporation, United States Machine & Engineering Co., a Corporation, Crane Company, a Corporation, Ben Olson Co., a Corporation, H. C. Greene, Doing Business as H. C. Greene Iron Works, Carl Gebbers and Fred S. Haines, Copartners Doing Business Under the Firm Name and Style of Ajax Electric Company, S. O. Matthews and Frank L. Johns, Copartners Doing Business Under the Firm Name and Style of City Lumber Agency, J. D. Mullins, Doing Business as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves, Copartners Doing Business as P. & G. Lumber Company, Morris Kleiner, Doing Business as Liberty Lumber & Fuel Company, J. A. Soderberg, Doing Business West Coast Monumental Co., Theodore Hedlund, Doing Business as Atlas Paint Co., F. W. Madsen, Gustaf Jonasson. N. A. Hansen, A. J. VanBuskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred

Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, and Robert M. Davis and Frank C. Neal, Copartners Doing Business Under the Firm Name and Style of Davis & Neal, Sherman Wells, Carl J. Geringer, George Geringer, F. R. Schoen, A. W. Aufang, C. H. Boedecker, William L. Owen, F. N. Bergen, F. H. Godfrey, and W. E. Morris, Colby Star Manufacturing Company, a Corporation, Tacoma Shipbuilding Company, a Corporation, Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company, a Corporation, Seattle Hardware Company, a Corporation, Frederick Webber, and O. S. Larson, [469] GREETINGS:

YOU ARE HEREBY NOTIFIED that in a certain case in equity in the United States District Court in and for the Western District of Washington, Southern Division, wherein McClintic-Marshall Company, a corporation, is complainant, and J. P. Duke, as Supervisor of Banks of the State of Washington, and as successor in office to the defendant Claude P. Hay, as State Bank Commissioner of the State of Washington, Forbes P. Haskell, Jr.,

as Special Deputy Supervisor of Banks of the State of Washington, and Scandinavian-American Bank of Tacoma, a corporation, et al., are defendants and cross-complainants, said case being numbered 117—E, in which case a decree was entered and rendered by the said Court on the 2d day of May, 1922, an appeal has been allowed J. P. Duke, as Supervisor of Banks of the State of Washington, and as successor in office to the defendant Claude P. Hay, as State Bank Commissioner of the State of Washington, Forbes P. Haskell, Jr., as Special Deputy Supervisor of Banks of the State of Washington, and Scandinavian-American Bank of Tacoma, a corporation, defendants therein, to the United States Circuit Court of Appeals for the Ninth Circuit.

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the city of San Francisco, in the State of California, within thirty days from the date of this citation, and there show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS, the Honorable E. E. CUSHMAN, Judge of [470] the United States District Court for the Western District of Washington, this 31st day of July, 1922.

EDWARD E. CUSHMAN,  
Judge.

Service of the above and foregoing citation is hereby acknowledged this 10th day of August, 1922.

HAYDEN, LANGHORNE & METZGER,

Attorneys for Complainant.

F. D. OAKLEY,  
KELLY & MacMAHON,

Attorneys for Scandinavian-American Building Company and for Forbes P. Haskell, Its Receiver.

FITCH & ARNTSON,  
R. S. HOLT,  
Attorney for Savage-Scofield Company.

JAMES W. REYNOLDS,  
Attorney for E. E. Davis & Company.  
R. S. HOLT,

Attorney for Hunt & Mottet.

DAVIS & NEAL,  
Attorney for Washington Brick, Lime & Sewer Pipe Company.

A. O. BURMEISTER,  
Attorney for United States Machine & Engineering Co.

FLICK & PAUL,  
Attorneys for Tacoma Millwork Supply Company.

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Attorneys for Scandinavian-American Bank of Tacoma, Claude P. Hay, Forbes P. Haskell,



Deputy State Bank Commissioner, John P. Duke, Supervisor of Banking, et al.

BATES & PETERSON,

Attorneys for Puget Sound Iron & Steel Works.

H. S. GRIGGS,

L. R. BONNEVILLE,

Attorneys for St. Paul & Tacoma Lumber Company.

W. W. KEYES,

Attorney for Henry Mohr Hardware Company.

BOGLE, MERRITT & BOGLE,

Attorney for Otis Elevator Company.

GROSSCUP & MORROW,

Attorney for Colby Star Manufacturing Company. [471]

LYLE, HENDERSON & CARNAHAN,

Attorney for Tacoma Shipbuilding Company.

STILES & LATCHAM,

Attorney for Ben Olson Company & F. H. Godfrey.

E. N. EISENHOWER,

Attorney for Ajax Electric Company.

TEATS, TEATS & TEATS,

Attorney for J. D. Mullins Company.

LOUIS J. MUSCEK,

Attorney for Liberty Lumber & Fuel Company.

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Attorney for Atlas Paint Company.

TUCKER & HYLAND,

Attorneys for O. S. Larson.

HERR, BAYLEY & CROSON,  
Attorney for Seattle Hardware Company.  
CHAS. BEDFORD,  
Attorney for N. A. Hansen et al. Included as De-  
fendants in Cross-complaint.  
S. F. McANALLY,  
Attorney for C. H. Boedecker, Wm. L. Owen, et al.  
WALTER S. FULTON,  
Attorney for Crane Company.  
H. A. P. MYERS,  
Attorney for H. C. Greene Iron Works.  
BURKEY, O'BRIEN & BURKEY,  
Attorney for City Lumber Agency.  
GROSSCUP & MORROW,  
Attorney for P. & G. Lumber Company.

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Attorney for West Coast Monumental Company.  
L. R. BONNEVILLE,  
Attorney for Davis & Neal.  
D. R. HOPPE,  
Attorney for Theodore Hedlund.  
BAUSMAN, O. B. & E.  
Attorney for Frederick Webber.

Copy of the within received this 10th day of Aug.  
1922.

HARTMAN & HARTMAN,  
Attorney for W. E. Morris.  
DE WITT M. EVANS,  
Attorney for F. R. Schoen.

[Indorsed]: Filed in the United States District  
Court, Western District of Washington, Southern

Division. Jul. 31, 1922. F. M. Harshberger, Clerk.  
By Ed M. Lakin, Deputy. [472]

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**Notice of Lodgment of Statement of Evidence of  
J. P. Duke et al. and Acknowledgment of Service, etc.**

To \_\_\_\_\_,  
Attorneys for \_\_\_\_\_.

You are hereby notified that on the 29th day of June, 1922, J. P. Duke, as Supervisor of Banks of the State of Washington, one of the defendants and cross-complainants in the above-entitled action lodged with the Clerk of the above-entitled court his proposed statement of the testimony as provided in Equity Rule 75 (be), to be used by him on his appeal to the Circuit Court of Appeals for the Ninth Circuit; and take notice further that on Friday, the 21st day of July, 1922, at 10:00 o'clock A. M., or as soon thereafter as the matter can be heard, the undersigned will apply to the said Court to approve said statement.

F. D. OAKLEY,  
KELLY & MacMAHON,  
Attorneys for Said J. P. Duke as Said Supervisor of Banks.

We, the undersigned, attorneys for party litigants in the within entitled action hereby acknowledge service of notice of lodgment of statement of evidence on behalf of F. P. Haskell, Jr., Receiver

of the Scandinavian-American Building Company  
this 3d day of July, A. D. 1922.

TEATS, TEATS & TEATS,

Attys. for Mullins Bros.

DAVIS & NEAL,

Attys. Washington Brick, Lime & Sewer Pipe  
Co.

H. S. GRIGGS,

Atty. for St. Paul & Tac. Lbr. Co.

L. R. BONNEVILLE,

Atty. for Davis & Neal.

GROSSCUP & MORROW,

Attorney for P. & G. Lumber Co. and Colby Star  
Iron Wks. [473]

R. S. HOLT,

Atty. for Far West Clay Co.

FITCH & ARNTSON and

R. S. HOLT,

Attys. for Savage-Scofield Co.

BURKEY, O'BRIEN & BURKEY,

Attys. for City Lbr. Agency.

E. N. EISENHOWER,

Atty. for Ajax Electric Co.

BATES & PETERSON,

Attys. for Puget Sound Iron & Steel Wks.

W. W. KEYES,

Atty. for Hunt & Mottet and Henry Mohr.

HAYDEN, LANGHORNE & METZ-  
GER,

Attorneys for Complainant.

STILES & LATCHAM,

Attys. for Ben Olson Co. and F. H. Godfrey.

LUND &amp; LUND,

DeWITT M. EVANS,

Attys. for F. R. Schoen.

CHAS. BEDFORD,

Atty. for Hansen et al.

LOUIS J. MUSCEK,

Atty. for Liberty Lumber Fuel Co.

A. O. BURMEISTER,

Atty. for U. S. Mach. &amp; Eng. Co.

LYLE, HENDERSON &amp; CARNAHAN,

Atty. for Tacoma Shipbuilding Co.

S. F. McANALLY,

Atty. for Chas. Owen &amp; Boedecker.

We, the undersigned, attorneys appearing for party litigants in the within entitled action hereby acknowledge service of notice of lodgment of statement of evidence on behalf of F. P. Haskell, Jr., Receiver of the Scandinavian-American Building Company this 8th day of July, A. D. 1922.

J. W. REYNOLDS,

Attorney for E. E. Davis &amp; Co.

HARTMAN &amp; HARTMAN,

Attorneys for Morris, et al.

HERR, BAYLEY &amp; CROSON,

Attys. for Seattle Hardware Co.

H. A. P. MYERS,

Atty. for H. C. Green etc., Bausman, O. B. & E.  
for Webber.

WALTER S. FULTON,

Atty. for Crane Co.

FLICK &amp; PAUL,

Attys. for Tacoma M. &amp; S. Co.



D. R. HOPPE,

Atty. for Theodore Hedlund. [474]

TUCKER & HYLAND,

Attys. for O. S. Larson.

W. M. HARVEY,

R. J. M.,

Atty. for Edward Miller Cornice & Roofing Co.

BOGLE, MERRITT & BOGLE,

Attorneys for Otis Elevator Co.

F. D. OAKLEY and

KELLY & MacMAHON,

Attorneys for F. P. Haskell, Receiver, etc.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 10, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [475]

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**Petition for Appeal of McClintic-Marshall Company.**

The above-named plaintiff, McClintic-Marshall Company, and the following defendants, or intervenors, to wit, E. E. Davis & Company, a corporation, and Far West Clay Company, a corporation, conceiving themselves aggrieved by the decree made and entered on the 2d day of May, 1922, in the above-entitled cause, do hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the several reasons specified in the assignment of errors which is filed herewith, and they pray that this appeal

may be allowed and that citation be issued as provided by law, and that the statement of the evidence heretofore certified by this court in this cause in connection with the appeals of Forbes P. Haskell as Receiver of Scandinavian-American Building Company, a corporation, R. T. Davis and others doing business as Tacoma Millwork Supply Company, Washington Brick, Lime & Sewer Pipe Company, and Ben Olson Company, and John P. Duke as Supervisor of Banks of the State of Washington, may be allowed and certified as the statement of the evidence under this appeal, and that a transcript of the record, proceedings and paper [476] upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

HAYDEN, LANGHORNE & METZGER,  
Attorneys for McClintic-Marshall Co.  
PETERS & POWELL,  
JAMES W. REYNOLDS,  
Attorneys for E. E. Davis & Company.  
R. S. HOLT,  
Attorneys for Far West Clay Co.

The foregoing claim of appeal is hereby allowed, upon giving bond, as required by law, for the sum of \$500.00.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 26, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [477]

**Bond on Appeal of McClintic-Marshall Company.**

KNOW ALL MEN BY THESE PRESENTS: That we, McClintic-Marshall Company, a Pennsylvania corporation, E. E. Davis & Company, a Washington corporation, and Far West Clay Company, a Washington corporation, as principal, and the National Surety Company of New York, a corporation organized and existing under and by virtue of the laws of the state of New York, and duly authorized to transact the business of surety in the state of Washington, as surety, are held and firmly bound unto Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant, and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company, in the sum of Five Hundred and no/100 Dollars (\$500.00), lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, by these presents. [478]

Sealed with our seals and dated this — day of October, 1922.

WHEREAS the above-named McClintic-Marshall Company, E. E. Davis & Company, and Far West

Clay Company, have prosecuted a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment of the district court for the Western District of Washington, in the above-entitled cause:

NOW, THEREFORE, the condition of this obligation is such that if the above-named McClintic-Marshall Company, E. E. Davis & Company, and Far West Clay Company shall prosecute their said appeal to effect and answer all costs if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

McCLINTIC-MARSHALL COMPANY.

By HAYDEN, LANGHORNE & METZGER,

Its Attorneys.

E. E. DAVIS & COMPANY.

By PETERS & POWELL,

Its Attorneys.

FAR WEST CLAY COMPANY.

By R. S. HOLT,

Its Attorney.

NATIONAL SURETY COMPANY.

[Corporate Seal] By W. B. GILHAM,

Its Attorney in Fact.

The foregoing bond approved this 31st day of Oct. 1922.

EDWARD E. CUSHMAN,

Judge. [479]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 30, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [480]

**Assignment of Errors of McClintic-Marshall Company.**

McClintic-Marshall Company, a corporation, E. E. Davis & Company, a corporation, and Far West Clay Company, a corporation, respectfully submit and hereby make the following assignment of errors in the above-entitled cause, upon which they rely as supporting their appeal from the judgment and decree made and entered in the above-entitled cause on the 2d day of May, 1922, and under which assignment of errors said appellants seek reversal of the decision, judgment and decree of the trial Court.

## I.

The Court erred in holding that the defendants Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant, and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company, have a valid and subsisting materialman's lien upon the real estate and premises described in paragraph 3 of said decree, or any part thereof, for the reason that said parties by their original and amended complaint in intervention and by their other pleadings and by the evidence submitted in [481] support thereof elected to and did affirm the contract entered into between them and the Scandinavian-American Building Company and did thereby affirm each and every part of said contract, including the 14th



paragraph thereof, by the terms of which they expressly waived any and all right of lien whatsoever.

## II.

The Court erred in holding that said parties doing business under the name and style of Tacoma Millwork Supply Company were entitled to any lien whatsoever against the real estate or premises described in paragraph 3 of said decree, or any part thereof, upon the ground and for the reason that said parties by their pleadings, admissions and evidence elected to and did affirm in each and every part thereof the contracts theretofore made by them with the Scandinavian-American Building Company, and in particular did affirm the provisions of paragraph 14 of said contract, wherein and whereby they waived all right to any claim of lien whatsoever.

## III.

The Court erred in allowing said parties doing business as Tacoma Millwork Supply Company a materialman's lien upon the real estate and premises described in paragraph 3 of the decree, for the reasons that the said claim of lien was based upon a series of contracts constituting a single transaction and one general undertaking, whereunder said parties became and were contractors for the furnishing and installing in place of certain materials, and that if entitled to any lien at all said lien should only be of the rank of a contractor's lien.

WHEREFORE these appellants pray that said decree may be reversed and that said District Court

for the Western [482] District of Washington, be ordered to enter a decree reversing the decision of the lower Court in said cause in so far as it establishes and decrees any lien in favor of R. T. Davis, Jr., and others, doing business as the Tacoma Millwork Supply Company.

HAYDEN, LANGHORNE & METZGER,  
Attorneys for McClintic-Marshall Company.

PETERS & POWELL,  
JAMES W. REYNOLDS,  
Attorneys for E. E. Davis & Company.

R. S. HOLT,  
Attorneys for Far West Clay Company.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 26, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [483]

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**Proposed Statement of Evidence on Appeal of  
McClintic-Marshall Company et al.**

The appellant, McClintic-Marshall Company, E. E. Davis & Company and Far West Clay Company, hereby propose as the statement of evidence under Equity Rule 75, to be used on their appeal from the decree rendered in this court and cause on May 2, 1922, the statement of evidence heretofore proposed by R. T. Davis, Jr., and others, doing business as Tacoma Millwork Supply Company, and incorporated in the general statement of evidence allowed and certified by this Court under date of

October 9, 1922, the particular portion of said general statement hereby proposed and relied upon being found on pages 11 to 111, inclusive, and these appellants hereby pray that this Court may enter a show cause order returnable on a day certain, requiring the parties to this case to show cause, if any they have, why the statement of evidence heretofore certified and allowed should not be further certified and allowed as the statement of evidence upon this appeal.

HAYDEN, LANGHORNE & METZGER,  
 Attorneys for McClintic-Marshall Co.  
 PETERS & POWELL and  
 JAMES W. REYNOLDS,  
 Attorneys for E. E. Davis & Co.  
 R. S. HOLT,  
 Attorneys for Far West Clay Co.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 26, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [484]

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**Order to Show Cause Why Statement of Evidence  
 Should not be Certified as Evidence on Appeal  
 of McClintic-Marshall Company, E. E. Davis  
 & Co., and Far West Clay Co.**

WHEREAS an appeal has heretofore been allowed McClintic-Marshall Company, a corporation, complainant herein, E. E. Davis & Company, a corporation, and Far West Clay Company, a corpora-

tion, defendant herein, and said appellants by their petition for the allowance of their appeal asked that the statement of evidence heretofore certified by this Court as the statement of evidence upon the appeals heretofore taken being certified and allowed as the statement of evidence in connection with this appeal, and the court being duly advised in all the premises:

IT IS THEREFORE ORDERED that all parties to this cause appear before this court at 10 A. M., on Monday, the 30th day of October, 1922, to show cause if any they have why the statement of evidence heretofore certified by this Court should not be certified and allowed as the statement of evidence upon the appeal of the said McClintic-Marshall Company, E. E. Davis & Company, and Far West Clay Company.

IT IS FURTHER ORDERED that a copy of this order be served upon the several parties to this action at least three (3) days before the day hereby fixed for the hearing hereof.

Done in open court this 26th day of October, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 26, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [485]

**Stipulation Re Statement of Evidence on Appeal of  
McClintic-Marshall Co. et al.**

WHEREAS, the petition of McClintic-Marshall Company, E. E. Davis & Company and Far West Clay Company for an appeal to the Circuit Court of Appeals for the Ninth Circuit from the decree rendered by the above-entitled Court in the above-entitled cause on May 2, 1922, was allowed on October 26, 1922, and on said date an order to show cause why the statement of evidence heretofore allowed and certified by this court on October 9, 1922, should not be certified and allowed as the statement of evidence under Equity Rule 75, upon said appeal of McClintic-Marshall Company and others, was entered, returnable October 30, 1922; and

WHEREAS all the evidence in the above-entitled cause in any way relating to the said appeal of McClintic-Marshall Company, E. E. Davis & Company and Far West Clay Company, is already set forth and embodied in the statement of evidence certified under date of October 9, 1922, and any further or additional statement would be a duplication of the statement heretofore certified and allowed:

NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the several parties to this action signatories hereof, that the said statement of evidence certified and allowed as such, under Equity Rule 75, by the above-entitled court on October 9, 1922, shall be and shall be deemed to be the statement of evidence for all purposes in connection with the appeal of McClintic-Marshall Com-



pany, E. E. Davis & Company and Far West Clay Company, and that this stipulation shall evidence the consent of the parties hereto to the entry of an order certifying and allowing the statement of [486] evidence heretofore certified and allowed under date of October 9, 1922, as the statement of evidence under Equity Rule 75 upon the appeal of McClintic-Marshall Company, E. E. Davis & Company and Far West Clay Company.

Dated this 28th day of October, 1922.

GUY E. KELLY,  
THOS. MacMAHON and  
F. D. OAKLEY,

As Attorneys for Forbes P. Haskell as Receiver of  
S. A. Building Co.

KELLY & MacMAHON, and  
F. D. OAKLEY,

As Attorneys for John P. Duke, State Supervisor  
of Banks of the State of Washington, and  
Forbes P. Haskell as Deputy State Bank Su-  
pervisor in Charge of S. A. Bank of Tacoma.

EDWIN H. FLICK,

Attorneys for R. T. Davis, Jr., et al., Doing Business  
as Tacoma Millwork Supply Company.

CHARLES P. LUND, and

DAVIS & NEAL,

Attorneys for Washington Brick, Lime & Sewer  
Pipe Company.

STILES & LATCHAM,

Attorneys for Ben Olson Company and F. H. God-  
frey.

PETERS & POWELL, and

JAS. W. REYNOLDS,

Attorneys for E. E. Davis & Company.

R. S. HOLT,

Attorney for Far West Clay Co.

HAYDEN, LANGHORNE & METZGER,

Attorney for McClintic-Marshall Co.

H. S. GRIGGS and

L. R. BONNEVILLE,

Attorneys for St. Paul & Tacoma Lbr. Co.

L. R. BONNEVILLE,

Attorney for Davis & Neal.

TEATS, TEATS & TEATS,

Attorney for J. D. Mullins.

LOUIS J. MUSCEK,

Attorney for Morris Kleiner.

DeWITT M. EVANS,

Attorney for F. R. Schoen.

CHAS. BEDFORD,

Attorney for N. A. Hansen, et al.

GROSSCUP & MORROW,

Attorneys for P. & G. Lumber Co. and Colby Star  
Mfg. Co.

FITCH & ARNTSON,

Attys. for Savage-Scofield Co.

BURKEY, O'BRIEN & BURKEY,

Attys. City Lumber Agency.

BATES & PETERSON,

Attys. for P. S. I. & Steel Wks.

E. N. EISENHOWER,

Atty. for Carl Gebbers and Fred Haines.

H. A. P. MYERS,

Atty. for H. C. Greene, etc.

HERR, BAYLEY & CROSON,

Attorneys for Seattle Hardware Co.

TUCKER & HYLAND,

Attys. for O. S. Larson. [487]

W. W. KEYES,

Attorney for Henry Mohr and Hunt & Mottet.

S. F. McANALLY,

Atty. for C. H. Boedecker and William L. Owens.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 30, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [488]

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**Order Settling and Allowing Statement of Evidence  
on Appeal of McClintic-Marshall Company.**

This cause coming on regularly to be heard at the time fixed for the parties herein to show cause why the statement of evidence heretofore and under date of October 9, 1922, certified and allowed as the statement of evidence upon the appeals then taken in this case, should not be further certified and allowed as the statement of evidence upon the appeal of McClintic-Marshall Company, E. E. Davis & Company, and Far West Clay Company, and it appearing to the Court that due service of said order has been made, and that it has been stipulated by all the parties to this action that the aforesaid statement of evidence heretofore lodged with the Clerk of this court and

certified under date of October 9, 1922, might also be certified and allowed as the statement of evidence upon the said appeal of McClintic-Marshall Company, et al., and the court being otherwise duly advised in the premises,

DOTH HEREBY CERTIFY that the matters and proceedings contained in the statement of evidence heretofore certified and allowed under date of October 9, 1922, are matters and proceedings occurring in the above-entitled cause, and the same are hereby made a part of the record herein, and that [489] the same contains all the exhibits and all the material facts and proceedings heretofore occurring and the evidence received in said cause in any material or pertinent to the appeal of the McClintic-Marshall Company, E. E. Davis & Company and Far West Clay Company, and do hereby further certify that said statement of evidence contains all the material evidence and testimony adduced upon the trial of said cause reduced to narrative form, except where for the sake of clarity testimony is reproduced *verbatim* which is material to or which was received upon the trial of said cause in connection with the matters and things involved in said appeal of McClintic-Marshall Company, et al., and

IT IS THEREFORE HEREBY ORDERED that said statement of evidence heretofore certified and allowed under date of October 9, 1922, be and the same is hereby certified and allowed as the statement of evidence required by equity rule No. 75 upon the appeal of McClintic-Marshall Company,

E. E. Davis & Company and Far West Clay Company.

Done in open court this 30th day of October, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 30, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [490]

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**Citation of McClintic-Marshall Company.**

UNITED STATES OF AMERICA to Ann Davis and R. T. Davis, Jr., as Executors of the Estate of R. T. Davis, Deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, Copartners Doing Business Under the Name and Style of Tacoma Millwork Supply Co., G. Wallace Simpson, Savage-Scofield Company, a Corporation, Puget Sound Iron & Steel Works, a Corporation, St. Paul & Tacoma Lumber Co., a Corporation, Henry Mohr Hardware Company, Inc., a Corporation, Hunt & Mottet, a Corporation, Edward Miller Cornice & Roofing Company, a Corporation, Washington Brick, Lime & Sewer Pipe Company, a Corporation, Otis Elevator Company, a Corporation, United States Machine & Engineering Co., a Corporation, Crane Company, a Corpo-



ration, Ben Olson Co., a Corporation, H. C. Greene, Doing Business as H. C. Greene Iron Works, Carl Gebbers and Fred S. Haines, Copartners Doing Business Under the Firm Name and Style of Ajax Electric Company, S. O. Matthews and Frank L. Johns, Copartners Doing Business Under the Firm Name and Style of City Lumber Agency, J. D. Mullins, Doing Business as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves, Copartners Doing Business as P. & G. Lumber Company, Morris Kleiner, Doing Business as Liberty Lumber & Fuel Company, J. A. Soderberg, Doing Business as West Coast Monumental Co., Theodore Hedlund, Doing Business as Atlas Paint Co., F. W. Madsen, Gustaf Jonasson, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed. Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, and Robert M. Davis and Frank C. Neal, Copartners Doing Business Under the Firm Name and Style of Davis & Neal, Sherman Wells, Carl J. Gerringer, George Gerringer, F. R. Schoen, A. W.

Anfang, C. H. Boedecker, William L. Owen, F. N. Bergen, F. H. Godfrey, and W. E. Morris, Colby Star Manufacturing Company, a Corporation, Tacoma Shipbuilding Company, a Corporation, Scandinavian-American Building Company, a Corporation, Forbes B. Haskell, as Receiver of Scandinavian-American Building Company, a Corporation, Scandinavian-American Bank of Tacoma, a Corporation, P. Claude Hay, as State Bank Commissioner for the State of Washington, and John P. Duke, His Successor in Office [491] as Supervisor of Banks of the State of Washington, Forbes P. Haskell, as Deputy State Bank Commissioner for the State of Washington, Seattle Hardware Company, a Corporation, Frederick Webber, and O. S. Larson, GREETINGS:

YOU ARE HEREBY NOTIFIED that in a certain case in equity in the United States District Court in and for the Western District of Washington, Southern Division, wherein McClintic-Marshall Company, a Corporation, is complainant, and Forbes P. Haskell, as Receiver of Scandinavian-American Building Company, a Corporation, et al., are defendants and cross-complainants, said case being numbered 117-E, in which case a Decree was entered and rendered by the said Court on the 2d day of May, 1922, an appeal has been allowed McClintic-Marshall Company, a corporation, complainant herein and E. E. Davis & Company, a corporation, and Far West Clay Company, a corpora-

tion, defendants therein, to the United States Circuit Court of Appeals for the Ninth Circuit.

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, in the State of California, within thirty days from the date of this citation, and there show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS, the Honorable EDWARD E. CUSHMAN, Judge of the United States District Court for the Western District of Washington, this 26th day of October, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 26, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [492]

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**Acknowledgment of Service of Citation and Order to Show Cause of McClintic-Marshall Company.**

We hereby acknowledge due service upon us of the citation upon the appeal of McClintic-Marshall Company, a corporation, E. E. Davis & Company, a corporation, and Far West Company, a corporation, and of the order to show cause as to the statement of evidence upon such appeal dated October

26, 1922, by receipt of true copies of said citation and order this 26th day of October, 1922.

GUY E. KELLY, and  
THOS. MacMAHON and  
F. D. OAKLEY,

As Attorneys for Forbes P. Haskell, as Receiver of S. A. Building Co.

KELLY & MacMAHON and  
F. D. OAKLEY,

As Attorneys for John P. Duke, State Supervisor of Banks of the State of Washington, and Forbes P. Haskell as Deputy State Bank Supervisor in Charge of S. A. Bank of Tacoma.

EDWIN H. FLICK,

Attorneys for R. T. Davis, Jr., et al., Doing Business as Tacoma Millwork Supply Company.

CHARLES P. LUND and  
DAVIS & NEAL,

Attorneys for Washington Brick, Lime & Sewer Pipe Company.

STILES & LATCHAM,

Attorneys for Ben Olson Company, and F. H. Godfrey. [493]

FITCH & ARNTSON,

Attorneys for Savage-Scofield Co.

BATES & PETERSON,

Attorneys for Puget Sound Iron & Steel Works.

H. S. GRIGGS,

L. R. BONNEVILLE,

Attorneys for St. Paul & Tacoma Lumber Co.

W. W. KEYES,

Attorneys for Henry Mohr Hardware Co., Inc.,  
and Hunt & Mottet.

Mr. Harvey, being out of town, I left true copies  
of said citation and order with Mr. Talbot, in Mr.  
Harvey's office Oct. 28, 1922. Served by

GORDON MIFFLIN,

Attorney for Edward Miller Cornice & Roofing  
Co.

BOGLE, MERRITT & BOGLE,

Attorneys for Otis Elevator Co.

GROSSCUP & MORROW,

Attorneys for Colby-Star Manufacturing Company  
and P. and G. Lumber Co.

WALTER S. FULTON,

Attorney for Crane Company.

H. A. P. MYERS,

Attorney for H. C. Greene.

E. N. EISENHOWER,

Attorney for Carl Gebbers and Fred S. Haines.

BURKEY, O'BRIEN & BURKEY,

Attorneys for C. O. Matthews and Frank L.  
Johns.

TEATS, TEATS & TEATS,

Attorneys for J. D. Mullins.

LOUIS J. MUSCIK,

Attorney for Morris Kleiner. [494]

CHAS. BEDFORD,

Attorneys for N. A. Hansen et al.

L. R. BONNEVILLE,

Attorney for Robert M. Davis and Frank C. Neal.



DeWITT M. EVANS,

Attorney for F. R. Schoen.

S. F. McANALLY,

Attorney for C. H. Boedecker and William L. Owen.

Copy of the within received this 28 day of Oct., 1922.

HARTMAN & HARTMAN,

Attorneys for W. E. Morris.

HERR, BAYLEY & CROSON,

Attorneys for Seattle Hardware Co.

BAUSMAN, OLDHAM, B. & E.,

Attorneys for Frederick Webber and Sherman Wells.

TUCKER & HYLAND,

Attorneys for O. S. Larson.

D. R. HOPPE,

Attorney for Theo. Hedlund.

S. N. LOCKERBY,

Attorney for J. A. Soderberg.

LYLE, HENDERSON and CARNAHAN,

Attorneys for Tacoma Shipbuilding Co.

A. O. BURMEISTER,

Attorney for U. S. Machine & Engineering Co.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 30, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [495]

**Order Enlarging Time to and Including June 12, 1922, to File Record and Docket Cause (Tacoma Millwork Supply Company).**

BE IT REMEMBERED, that this matter came on duly on the application of appellants doing business under the firm name and style of Tacoma Millwork Supply Company, for an order granting additional time over that limited by rule of court or statute for the preparation and filing of the record on appeal in the foregoing cause; and it appearing to this Court that the said appellants have this day duly given notice of appeal in open court and filed their petition for appeal, which has been duly allowed, together with their assignments of error; and it further appearing that owing to the number of parties interested in this cause, the size of the record and necessity of segregation of evidence from the statement of facts therein, that it will require considerable time for the preparation of such record,—

NOW, THEREFORE, it is hereby ORDERED AND ADJUDGED that said appellants have and they are hereby granted to and including the 12th day of June for the preparation and filing of their record on appeal in this cause.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 3, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [496]

At a regular session of the United States District Court for the Western District of Washington, Southern Division, held at Tacoma on the 21st day of July, 1922, the Honorable EDWARD E. CUSHMAN, United States District Judge presiding, among other proceedings had, were the following truly taken and correctly copied from the journal of said court, to wit:

No. 117-E.

McCLINTIC-MARSHALL CO.

vs.

SCANDINAVIAN-AMERICAN BUILDING CO.  
et al.

**Order Enlarging Time to and Including July 28, 1922, to File Record and Docket Cause (Tacoma Millwork Supply Company).**

Now, on this 21st day of July, 1922, F. D. Oakley, Robt. Davis, T. L. Stiles, Thos. MacMahon, F. D. Metzger, present as counsel for litigants, the Tacoma Millwork and Supply Company, are granted an extension of time to Friday, July 28, for settlement of statement and to file record.

Plaintiff's objection to statement of Haskell, receiver herein, is overruled.

The Ben Olson statement and proposed amendments is agreed upon. Also Washington B. L. & S. P. Co. statement and proposed amendments is agreed upon. Further hearing on bill of exceptions is continued to 10 A. M. July 22, 1922. [497]

**Order Continuing Cause.**

This cause having been regularly called for hearing for the purpose of considering the approval by the Court of the statement of evidence to be made a part of the record on the appeal of said cause to the Circuit Court of Appeals for the Ninth Circuit, and it appearing to the Court that the matter cannot be heard and settled and approved during the present term, and upon motion of Kelly & MacMahon, attorneys for F. P. Haskell, Receiver of the Scandinavian-American Building Company, a corporation, and also as attorneys for J. P. Duke, as Supervisor of Banks for the State of Washington, and upon motion of Flick & Paul, attorneys for Tacoma Millwork Supply Company, one of the defendants above named,—

IT IS HEREBY ORDERED, that the matter of approving the statement of evidence heretofore lodged by the Tacoma Millwork Supply Company, J. P. Duke, as Supervisor of Banks of the State of Washington, and F. P. Haskell, as Receiver of the Scandinavian-American Building Company, a corporation, and Ben Olson Company, and the entire matter of preparing and approving the Statement of Evidence as provided under Equity Rule 75 (b) and all other matters referring to an appeal of the above-entitled action to the Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby continued and carried over to the next term of this court, for further consideration and action.

Done in open court June 30, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 30, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [498]

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**Order Extending Time to and Including September 28, 1922, to File Record and Docket Cause (Forbes P. Haskell).**

For satisfactory reasons appearing to the Court the time for filing record on behalf of Forbes P. Haskell, as Receiver of Scandinavian-American Building Company, a corporation, in this cause in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to the appeal sued out, is hereby extended to and including the 28th day of September, 1922.

Dated August 30th, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Aug. 31, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [499]



**Order Extending Time to and Including September 28, 1922, to File Record and Docket Cause (J. P. Duke).**

For satisfactory reasons appearing to the Court the time for filing record on behalf of J. P. Duke, as Supervisor of Banks of the State of Washington, and as successor in office to the defendants Claude P. Hay, as State Bank Commissioner of the State of Washington, Forbes P. Haskell, Jr., as Special Deputy Supervisor of Banks of the State of Washington, and Scandinavian-American Bank of Tacoma, a corporation, in this cause in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to the appeal sued out, is hereby extended to and including the 28th day of September, 1922.

Dated August 30th, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Aug. 30, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [500]

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**Order Extending Time to and Including October 16, 1922, to File Record and Docket Cause (Ben Olson Company et al).**

This matter coming on for hearing on this 6th day of September, 1922, on the application of Ben Olson

Company, a corporation, the Tacoma Millwork & Supply Company, a corporation, the Washington Brick, Lime & Sewer Pipe Company, a corporation, Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company, and J. P. Duke, as Supervisor of Banks of the State of Washington, and as successor in office to the defendants Claude P. Hay, as State Bank Commissioner of the State of Washington, Forbes P. Haskell, Jr., as Special Deputy Supervisor of Banks of the State of Washington, and Scandinavian-American Bank of Tacoma, a corporation, appellants herein, for an order extending the time for the preparation and filing of the transcripts and records on appeal, pursuant to the appeals sued out herein by the various appellants to Monday, October 16, 1922, for the reason that the Court has been unable to sooner settle the various statements of evidence, and is about to be absent from the State, and for other satisfactory reasons; Now, therefore,—

IT IS HEREBY ORDERED, That the time for the preparation and filing of the transcripts and records on appeal on behalf of the various appellants named herein, in the Circuit Court of [501]

Appeals of the Ninth Circuit of the United States, be enlarged and extended to and including Monday, the 16th day of October, 1922.

Done in open court this 6th day of September, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Sept. 6, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [502]

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### **Order Fixing Date of Hearing.**

For satisfactory reasons appearing to the Court that the proposed statements of the evidence heretofore lodged in the office of the Clerk of the above-entitled Court and the amendments proposed thereto cannot be approved and settled by the Court prior to Oct. 9th, 1922,—

IT IS THEREFORE ORDERED that the said statements and all of the objections and amendments proposed thereto shall be brought on for hearing before the undersigned Judge, in the above-entitled court in the Federal Building, Tacoma, Washington, on October 9th, 1922, at 10 o'clock A. M., at which time the entire matter of approving the statement of the evidence will be considered and approved as directed by the Court.

Done in open court, September 6th, 1922.

EDWARD E. CUSHMAN,

Judge.

[Indorsed]: Filed in the U. S. District Court, Western District of Washington, Southern Division. Sept. 6, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [503]

We, the undersigned hereby acknowledge service of the above and foregoing order, together with copy of same dated this 3d day of October, 1922.

HAYDEN, LANGHORNE & METZGER,  
Attorneys for Complainant.

FLICK & PAUL,  
EDWIN H. FLICK,

Attorneys for Tacoma Millwork Supply Co. [503]

KELLY & MacMAHON,

Attorneys for Scandinavian-American Building Company and for Forbes P. Haskell, its Receiver.

FITCH & ARNTSON,

Attorney for Savage-Scofield Company.

J. W. REYNOLDS,

Attorney for E. E. Davis & Company.

R. S. HOLT,

Attorney for Far West Clay Company.

W. W. KEYES,

Attorney for Hunt & Mottet.

DAVIS & NEAL,

CHAS. P. LUND,

Attorneys for Washington Brick, Lime & Sewer Pipe Co.

A. O. BURMEISTER,

Attorney for United States Machine Engineering Co.

LYLE, HENDERSON & CARNAHAN,

Attorney for Tacoma Shipbuilding Company.

STILES & LATCHAM,

Attorney for Ben Olson Company & F. H. Godfrey.

E. N. EISENHOWER,  
Attorney for Ajax Electric Company.  
TEATS, TEATS & TEATS,

Attorney for J. D. Mullins Bros.

LOUIS J. MUSCEK,  
Attorney for Liberty Lumber & Fuel Company.

---

Attorney for Atlas Paint Company.  
TUCKER & HYLAND,

Attorney for O. S. Larson.

KELLY & MacMAHON and  
F. D. OAKLEY,

Attorneys for Scandinavian-American Bank of Tacoma, Claude P. Hay, Forbes P. Haskell, Deputy State Bank Comm., John P. Duke, Supervisor of Banking et al.

BATES & PETERSON,

Attorneys for Puget Sound Iron & Steel Works.

HERBERT S. GRIGGS,

Attorney for St. Paul & Tacoma Lumber Company.

W. W. KEYES,

Attorney for Henry Mohr Hardware Company.

WALTER M. HARVEY,

Attorney for Edward Miller Cornice & Roofing Company.

BOGLE, MERRITT & BOGLE,

Attorney for Otis Elevator Company.

GROSSCUP & MORROW,

Attorney for Colby Star Manufacturing Company.

WALTER S. FULTON,

By J. W. T.,

Attorney for Crane Company.



H. A. P. MYERS,

Attorney for H. C. Greene Iron Works.

BURKEY, O'BRIEN & BURKEY,

Attorney for City Lumber Agency.

GROSSCUP & MORROW,

Attorney for P. & G. Lumber Company.

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Attorney for Far West Coast Monumental Co.

L. R. BONNEVILLE,

Attorney for Davis & Neal.

D. R. HOPPE,

Attorney for Theodore Hedlund. [504]

HERR, BAYLEY & CROSON,

per D. C.,

Attorney for Seattle Hardware Company.

CHAS. BEDFORD (LC),

Attorney for N. A. Hansen et al., All Included as  
Defendants in Cross-complaint.

S. F. McANALLY,

Attorney for C. H. Boedecker, Wm. L. Owen et al.

BAUSMAN, OLDHAM, BULLITT &

EGGERMAN,

Attorneys for Frederick Webber, G. Wallace Simp-  
son.

Received this 4th day of Oct. 1922.

HARTMAN & HARTMAN,

Attorneys for W. E. Morris.

DEWITT M. EVANS,

Attorney for F. R. Schoen.

[Indorsed]: Filed in the United States District  
Court, Western District of Washington, Southern

Division. Oct. 5, 1922. F. M. Harshberger,  
Clerk. By Ed M. Lakin, Deputy. [505]

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**Statement of Testimony Lodged Pursuant to  
Equity Rule 75 (b) as Amended.**

The following is the condensed statement in narrative form of the testimony introduced upon the trial of the above-entitled cause made in pursuance of Equity Rule 75 (b) amending and correcting statements of testimony heretofore lodged in the clerk's office for the examination of plaintiff and the other defendants herein as provided by said rule, by J. P. Duke, as Supervisor of Banks of the State of Washington, F. P. Haskell, Jr., as Receiver of the Scandinavian-American Building Company, a corporation, Tacoma Millwork Supply Company, Ben Olson Company, a corporation, and Washington Brick, Lime and Sewer Pipe Company, a corporation, all in conformity to objections made to said original statements of testimony as settled under the direction of the Court. [506]

At the beginning of the case, and before the introduction of any evidence therein, the following occurred:

Mr. OAKLEY.—Before the first lien claim is started to be proved the Receiver wishes to make this objection to the introduction of any testimony that has to do with the lien foreclosure suit. We object for the reason that the property of the Scandinavian American Building Company is now in the hands of this Court through the appointment

of a receiver, and a lien foreclosure suit cannot be maintained looking toward the sale of the premises while the Court itself is administering the estate that has been held in the State of Washington and held in the United States Supreme Court as late as 241 U. S. page 587, in Bacon vs. Standard 60 Law Ed. 1191. . . . I want to show that the point has been raised properly before the Court and I am objecting to the proof of contractors and anything looking to the foreclosure of the liens.

The COURT.—It will be so considered.

Prior to the introduction of any testimony on behalf of the complainants, McClintic Marshall Company, the following occurred:

Mr. OAKLEY.— . . . The Receiver objects to the introduction of any testimony on the McClintic-Marshall claim for the reason that the contract provides that any controversies arising out of the contract should be submitted to arbitration, which was not done, and therefore bars the action. This was passed upon by the Court and I now renew the objection.

The COURT.—The objection overruled, exception allowed. [507]

**Testimony of Earl J. Patterson, for McClintic-Marshall Company.**

EARL J. PATTERSON, a witness called on behalf of McClintic-Marshall Co., testified as follows:

I am the assistant treasurer of the McClintic-Marshall Company; the McClintic Marshall Com-

(Testimony of Earl J. Patterson.)

pany shipped steel to the Scandinavian-American Building Company as follows:

May, 1920, 82,357 pounds.

June, 1920, 60,296 pounds.

July, 1920, 6,990 pounds.

August, 1920, 1,781,514 pounds.

September, 1920, 2,091,354 pounds.

October, 1920, 442,531 pounds.

#### **Exhibit No. 7.**

Letter from Larson to McClintic-Marshall Company, dated June 16, 1920.

“This morning we received the following telegram: Have shipped only girders to date. Traffic conditions and shortage of cars have forced mills to practically suspend rolling mill for past two weeks. The outlook more promising at present time. Hope to receive material for lower floors your building about July 1st and to make shipments in July. Shipment of entire building by first of September. It is impossible to make definite promise until mills resume operations.”

In our former letter to you we pointed out that our steel contract was awarded to your company under representations that the necessary steel for the entire building was to be taken out of the stock in five different yards, as we remember it, and when I was in the East the last time, being with your [508] Philadelphia representative about April 5th, I was assured that the first shipment of steel would go forward not later than the 10th

of April. Now it turns out that the rolling material has to be secured from the mills and that the steel was not in stock at all. I wish to point out again that we have been ready to erect this steel for the past six weeks and that the delay is costing us \$5,000 per month in interest and carrying charges on the building.

**Exhibit No. 12.**

Letter from Larson to H. H. McClintic, dated July 20th, 1920.

“We have previously pointed out to you that the steel order was awarded to your company from among several competitors on representation of your Philadelphia representatives that most of this steel would be taken out of stock in five different yards. It now turns out that you did not have the steel at all at the time this representation was made. . . . If this material can be had in the country, it seems to me that it is up to your people to buy it wherever you can get it and get it out here immediately in order to save us the added carrying charges which are accruing every day.”

**Exhibit No. 104.**

Letter from McClintic-Marshall Company to O. S. Larson, dated June 24, 1920.

“Our proposition for this work contemplated taking considerable material from stock and we have done so wherever possible.” [509]

**Exhibit No. 117.**

Frederick Webber to McClintic-Marshall Company. Letter dated May 1, 1920.



“You seem to be laboring under a wrong impression in regard to our steel work for the Scandinavian-American Building, Tacoma, Washington, and I am astonished to find such an excuse this morning, that you are waiting for the steel for your grillage and Mr. Chudduck informed me before he left that this was all in the shop. Our arrangement with Mr. Chudduck was as per our specifications, that four stories of the material was to be bought in the open market for immediate delivery. And he informed me that McClintic-Marshall was the only concern in the country who had the length and size of plates for the girders. We made substitutions to conform with the material you had on hand, and you entered into a contract with me under these conditions and according to the specifications.

We changed our plans to suit the material that you had in stock and he informed me before he went away that as far as grillage was concerned, it was all in the shop and they were working on it, and now I understand from you that you are waiting for it from the mills. The Scandinavian-American Bank people are willing to pay you an extra price which was considerably more than anybody else figured in order to take the material from your stock which Mr. Chudduck informed me he had on hand.

A long time ago your Mr. Burpee informed us a lot of the material had already been cut from material that was already in stock. You are certainly laboring under a [510] wrong impression

as your steel for the grillage should have been shipped according to our contract long before the railroad strike occurred. I trust I shall get a very different report from you by return."

**Exhibit No. 118.**

Letter from Frederick Webber to McClintic-Marshall Company dated May 7, 1920.

"I don't seem to be able to get any satisfaction to my inquiries with regard to the steel work for the above building. It was thoroughly understood between your Mr. Chudduck and myself that the steel work was to either be bought in the open market, as per our specifications, or to be taken from stock. After making inquiries Mr. Chudduck informed me that he was able to get the material for the first four floors as per the requirements of the specification. He also informed me before taking the contract that he had been able to obtain the plates for the large girder over the banking rooms. The other work he desired to alter to suit such material as you have on hand, which he informed me was about 30,000 tons. Our steel plane and layout has been changed to suit this condition, and I can't understand why I cannot get more definite information in regard to this work. I am trying to find out how much of this has been fabricated. According to the contract, the grillage has to be shipped within two months from the 5th of February. Various changes were made in the grillage to suit the material you had on hand. Mr. Kennedy now informs me that you are wait-

ing to have these beams rolled at the mill which is so foreign to my [511] understanding, specifications and contract.”

“It seems to me that it will be necessary to keep a man to look after this work in Pittsburg as at the present time the letters I have been writing do not seem to bring any results. If it is necessary I will come to Pittsburg and go over this matter with you as it appears to me that you have not the right impression of this contract.”

### **Exhibit No. 122.**

Letter from Frederick Webber to McClintic-Marshall Company dated June 12, 1920.

Your letter of June 10th received and contents noted. I am very much surprised to get your report. It is past my comprehension how you could have taken a contract and under such terms as are specified in our specifications and carried forward in your contract, and now, after four months, which is the expiration of your contract, to send me such a report as you do. Of course, it is quite evident that you did not have the material for the four floors in stock as Mr. Chudduck stated that you had, therefore you are not adhering to the specifications and contract. If you had four stories as per the contract, it would be possible for us to make a very good beginning, even if there was quite a delay on the other work.

In your report you do not say the condition of the work for the big girders and columns for the banking floor, what condition they are in or how

much work is being fabricated of same. The building committee has sent for me to come out there as they cannot understand why they are paying the highest price for the material and not receiving same, [512] and it was thoroughly understood that they should. You are putting me to the trouble of going there to explain why you have not lived up to your contract. According to your reports after four months not more than fifty per cent has even been rolled yet. This does not trouble me so much as the point that the four stories were to be taken from stock or bought in the open market and considering that the building company are paying you \$18,000 more than the contractors who figured on this work, but stated that they could not have the material in stock and would have to wait until it was rolled. As I stated, I must ask you for a more definite report on the work done on these first four floors.

**Exhibit No. 125.**

This is a statement showing the amount paid for extra work by the building company for correction of certain items and mistakes in the steel framework furnished by the complainant, aggregating \$3,000. [513]

**Testimony of David L. Glenn, for the Receiver.**

DAVID L. GLENN, a witness called on behalf of the Receiver, testified as follows:

I was the Assistant Superintendent in charge of the building; and have been engaged actively in steel erection business for fifteen years. A portion

(Testimony of David L. Glenn.)

of the steel furnished by the McClintic-Marshall Company was defectively fabricated, due to improper lengths, and improper placing of holes for rivets and bolts. The Scandinavian-American Building Company paid approximately \$3,000 to have these faults corrected. \$1626.41 of this amount was paid up to January 15, 1921, the balance was paid by the Receiver.

By Mr. LANGHORNE.—Are you on the second counterclaim now?

By Mr. OAKLEY.—Largely; yes.

Mr. LANGHORNE.—I will state to the Court *no* that the Court can keep it in mind, he has put in a counterclaim for some \$3,000 for correcting errors of fabrication. I think we will admit that there is about \$1100.00 that should be charged to us. The rest of it, I understand Mr. Oakley only claims there is about \$1600.00 he expects to prove.

### **Testimony of E. A. Gibbs, for McClintic-Marshall Company.**

E. A. GIBBS, a witness called on behalf of McClintic-Marshall Co., testified as follows:

I am the manager of the McClintic-Marshall Company and the general freight rate increasing freight between Pittsburg and Tacoma went into effect August 25, 1920. [514]

### **Testimony of C. C. Sharpe, for the Receiver.**

C. C. SHARPE, a witness called by the Receiver, testified as follows:

I was the bookkeeper of the Scandinavian-Ameri-



(Testimony of C. C. Sharpe.)

can Building Company. By reason of the increased freight rate, the Scandinavian-American Building Company was compelled to pay \$14,052.76 more than they would have paid if the materials had been shipped by the McClintic-Marshall Company prior to August 25, 1920. [515]

R. T. Davis, Jr., was manager of the Tacoma Millwork Supply Company during the time in issue (S. F., p. 372). Our principal work is interior finishing, windows and millwork of that nature (S. F. p. 373). We did the work on the Rust Building, a large modern office building across the street from the one in issue, and the Roosevelt High School at Seattle, and considerable work for the United States shipping corporation. (S. F., p. 373.)

“Q. Mr. Davis, at one time, about the 28th day of February, you entered into a form of contract did you not, with the Scandinavian-American Building Company, and prior to that you had submitted to them your proposal or bid, for all of the interior finishings and Bank fixtures and some other work?

A. Along about the seventeenth or eighteenth of February, 1920, we made proposals to Mr. Webber, the architect of the Scandinavian-American Building Company.

Q. I will ask you before you proceed, handing you a so-called general millwork contract, I will ask you if there is attached to it, the proposal which you submitted on the 17th day of February,—referring to it as Tacoma Millwork & Supply Com-

(Testimony of C. C. Sharpe.)

pany's Exhibit 151, for reference, is that the proposal?

A. There is a copy of the proposal attached.

Q. It is signed by Mr. Webber?

A. Signed by Mr. Webber, the architect.

Q. And it is attached to the formal contract dated the 20th day of February, is that right?

A. Yes, this is for material, 65,000.

Mr. FLICK.—We will offer this in evidence at this time.

Mr. HOLT.—Is the contract there too?

Mr. OAKLEY.—It is not a copy of the original.

Mr. FLICK.—This proposal is signed by Mr. Webber in the original, and we will offer this at this time, (referring to another paper); I have not the consent of Miss Carlson, but I will offer the original at this time.

The COURT.—That is the original?

Mr. FLICK.—This is a duplicate original.

The COURT.—It will be admitted. [516]

Mr. OAKLEY.—It is not to be introduced with the letter accompanying it, is it?

Mr. FLICK.—Surely, with the letter, that is part of our contract. Our proposal is referred to in the body of the main and formal agreement.

Mr. OAKLEY.—I cannot understand this letter of the 17th, which is addressed to Frederick Webber, the architect. It is signed, Tacoma Millwork & Supply Co. by Frederick Webber, architect.

Mr. FLICK.—It is just his method of signing it.

(Testimony of C. C. Sharpe.)

Mr. OAKLEY.—If you will follow that up and prove it, let it go.

WITNESS.—This is accepted by Frederick Webber, architect right there (indicating on exhibit.)

Said contract of Tacoma Millwork Supply Co. was received in evidence and marked Exhibit 151 (Flick).

Q. Frederick Webber never had any connection with your company in any way?

A. Absolutely no.

Q. In talking with Mr. Drury, what did he say as to the relationship Frederick Webber bore to this building?

A. Mr. Webber was the architect of the building and I presumed he had every authority to make contracts.”

The material contract, Exhibit #151, is so designated and appears at the conclusion of this evidence, to it is attached a proposal dated February, the 17th, referred to in said contract and made part of said exhibit, addressed to Frederick Webber, Archt. and signed Tacoma Millwork Supply Co., by R. T. Davis, Jr., Manager. This proposal in practically similar form also attached to the material contract is signed by Frederick Webber, Archt. This was for Sixty-five Thousand Dollars (\$65,000). This proposal was accepted by Frederick Webber the architect and contains his signature (S. F., p. 374).

(Testimony of C. C. Sharpe.)

Another contract of a formal nature, dated February 28th was entered into and this is known as the work of erection contract. (This will be referred to hereafter as the Erection Contract). (S. F., [517] p. 376.) This was for Thirty Thousand Dollars (\$30,000) and was for the erection of the millwork upon the building. To this was attached our proposal of February the 17th with reference to this erection work and the formal contract with proposals and acceptance attached thereto is now in evidence as the Tacoma Millwork Company's Exhibit #152 and appears at the end of this evidence as such exhibit number and with it are proposals governing said work referred to in the main contract one signed "Tacoma Millwork Supply Co." and an acceptance signed by Frederick Webber, Archt., with the difference to be noted that the words "bond to be paid for by owner" does not appear in the acceptance. With it appears another proposal dated February the 18th, 1920, relating to door bucks, signed by Tacoma Millwork & Supply Co.

Then there was another contract which is called the Bank Quarters or Banking contract, and is set out at the end of this evidence, and is with this evidence as Tacoma Millwork Company's Exhibit #153. This contract had to do with the furnishing of Bank fixtures in the banking quarters of this building (S. F., p. 376.)

About ninety per cent of the material under these contracts was gotten out, fashioned and tendered to

(Testimony of C. C. Sharpe.)

the building company and under the labor contract we performed about twenty per cent of that labor leaving about eighty per cent unfinished on this labor contract which is the Thirty Thousand Dollars (\$30,000) contract (S. F., p. 377). The following occurred in court at this time:

“Q. (By Mr. FLICK.) Well, will you tell His Honor, please, Mr. Davis, the character of the work, just briefly, the especial character that went into this building.

Mr. OAKLEY.—At this time the receiver objects to the introduction to any testimony tending to sustain a lien claim in this action for the reason that in each of these three contracts the following provision is set forth: [518]

Article 14: “And the Contractor further agrees for himself, his heirs, executors, administrators and assigns to waive any and all right to any mechanic’s claim or lien against said premises, and hereby expressly agrees not to file any claim or lien whatsoever against the premises involved in this contract.”

That provision is found in each of the three contracts, and for that reason we maintain that the parties are estopped from proceeding to claim or attempt to claim any liens.

The COURT.—I will have to hear the evidence before I would know what the ruling would be, so that I will hold the objection as premature and will overrule it.

Mr. OAKLEY.—I am raising the question at this



(Testimony of C. C. Sharpe.)

point, as I do not wish to waive my rights. Note an exception to the ruling of the court.

The COURT.—“Allowed.” (S. of F., pp. 377, 378.)

The Millwork Company's Exhibit #154, found at close of this evidence, is a schedule or computation of all material completed and delivered in the warehouse or stored in the warehouse at the factory, or delivered on the building, including all work and material necessary under the contracts entered into. The legend at the side of this Exhibit “C. W.” means complete in the warehouse and “C. F.” means complete at the factory warehouse (S. F., p. 379). Some of the material is marked “partially completed” and for this no charge is made and on this we think there might be some salvage. This material was all specially designed (S. F., p. 379).

Mr. Oakley raises the objection that these defendants and cross-complainants “have no lien upon materials which have not been delivered to the premises and with which they have not parted possession.”

The objection is overruled and final ruling reserved.

Mr. OAKLEY.—“It might be understood that the objection [519] will go to all the testimony to materials not actually delivered.”

Mr. HOLT.—“Let it be understood that objections made by Mr. Oakley are made in behalf of

(Testimony of C. C. Sharpe.)

all the other defending attorneys and will be so considered." (S. F., p. 379.)

The COURT.—\* \* \* His objection will be made in behalf of all claimants unless otherwise stated or indicated. (S. F., p. 380.)

We have two warehouses, one at our factory and the other at 2140 Pacific Avenue and the "D. F." would indicate the material stored at our warehouse at the factory and the "C. W." at the warehouse last designated.

Referring to Exhibit #154 the amounts set opposite each one of the separate lines represent the reasonable value of the material and labor entering into that material (S. F., pp. 380). That portion designated on Exhibit #154 as Exhibit "A-1" and Exhibit "B-1," that is the door buck contract and is incorporated in one of these contracts (S. F., p. 380), the one in reference to the erection of the work in the building, viz.: the thirty thousand dollar contract, the next sheet is "C-1" and that represents the bank quarters which is a separate contract and amounts to \$1759.00, the reasonable value for the material.

Mr. Oakley objects on the ground that these cross-complainants are relying upon the contract and that reasonable prices did not prevail.

Mr. FLICK.—"We are not relying on the contract, Mr. Oakley."

The COURT.—Objection was overruled. (S. F., p. 381.)

Exhibit "E-1" being a sheet attached to the main Exhibit #154, refers to scaffolding bucks which

(Testimony of C. C. Sharpe.)

were furnished on an open agreement and the amount represents the reasonable value at that time.

Exhibit "F-1" represents an open contract. Exhibit "G-1" [520] represents the premium on the surety bond which under the agreement was to be paid by the owner, viz.: \$718.41.

Mr. Oakley objects on the ground that it was not a lienable item.

The COURT.—Objection overruled (S. F., p. 382.)

This material is of no value if rejected after it is once manufactured (S. F., pp. 383.)

We furnished window frames and the sash, the interior doors and all the finish that goes with them. The interior is finished in mahogany and the exterior is finished in native wood, viz.: fir, under these contracts (S. F., pp. 383) and all of it is of a special design with particular size of openings and all made to fit this particular building, and these openings are not standard but are all special under architect's given dimensions, and the openings in this character of building vary being of one size in width and height in one building and another size in another building. (S. F., pp. 383). All the interior finish in its various parts, as for instance the door panels and sills of the doors, is all done to architect's details specially designed. This work could not be re-run for another job (S. F., p. 383). The doors are all made of laminated construction two, three or four ply with mahogany veneer on the surface. Photograph #155 shows the interior

(Testimony of C. C. Sharpe.)

mahogany door casings in the warehouse on Pacific Avenue together with window stools and window trim. Photograph #156 shows the exterior sash for these frames in the same warehouse. These photographs were taken January 25, 1921. Photograph #157 shows the exterior sash in the same warehouse. Photograph No. 158 shows some sash out at the factory warehouse. Photograph #159 shows some window frames and sash and inside door jambs at the factory warehouse. Photograph #160 shows interior finish and transom bars for these interior door frames [521] at the factory warehouse all ready to be set up. Photograph #161 shows a great quantity of mahogany doors with the door stiles made up and the mahogany veneer on them which required, however, a little more work by way of morticing and turning, smoothing and assembling the door pieces that are special in construction and it is very doubtful if we could rework them. The panels have already been placed in the doors and you cannot take a panel off without smashing it all to pieces. Photograph Exhibit #162 shows work of the door construction material and also a truck load of finish for window frames at the factory warehouse (S. F., pp. 387).

“Q. (By the COURT.) How can you say these doors were ninety per cent finished?”

A. I don't think you got my answer quite correct. Mr. Flick asked me what proportion of the whole business were completed.

(Testimony of C. C. Sharpe.)

Q. Of the general contract?

A. We had to do some work on these doors and we only asked to be remunerated for what we had already done on these.”

With reference to these doors we estimate a completed door at thirty dollars apiece and we are asking \$20; for what we have so far done on them. The one photograph does not show all the material for the work. Another photograph shows the panels that are already in these doors. This picture shows only a small part of the door. Photograph Ex. #163 shows some of the interior door jambs and some window frames, and in the distance there is another pile of window sash. These jambs are already morticed and *gained* ready to nail up. Photograph Exhibit #164 shows a lot of window and door casings at the factory warehouse and shows that we have already mitered the corners of these casings which involve labor performed under our labor erection contract. Instead of doing it on the job we did this at the factory. I do not see how these window and door and casings could be used in any other job (S. F. pp. 389). [522] Photograph Exhibit #165 was taken at the warehouse on Pacific Avenue and shows the sash already trimmed to fit into these window frames. This work is also a part of the erection labor. There is also on this photograph some base boards and shows that the painter for the Building Company had already started working on our material. Photograph Exhibit #166 shows a quantity of inside



(Testimony of C. C. Sharpe.)

door casings already glued upon the corners and ready for just nailing on to the wall. This also is erection work or work attributable to the thirty thousand dollar contract. This work also exhibits painters' material in preparation for work to be done by the building company's painters on our stuff.

“Q. What was the arrangement, Mr. Davis, with relation to painting and priming of this material, where was it to be done, and who arranged for the doing of that work?

A. Well, in our proposal, we made the suggestion to the architect, that unless he made some provision to prime this work, we would not guarantee it as against the elements; that is our work is subject to dampness, to even the slightest degree; it will very quickly go to pieces and be worthless and as a precautionary measure, I suggest to the architect, that they have their painter do the work before it left the warehouse. That was a matter of accommodation on our part.

Q. Do you know whether the painter had primed at the factory warehouse as well as at the warehouse down town?

A. The painter had primed at both places.”  
(S. F. pp. 390.)

We could not use the panel doors that have already been mortised and are ready for joining on any standard job because the specifications for this building were eastern specifications giving the doors a two inch thickness while the doors out west are

(Testimony of C. C. Sharpe.)

generally specified as an inch and three-eighths or an inch and three-quarters (S. F., p. 390), and architects are usually very particular as to their own designs on special buildings. One cannot use these [523] various windows and their members on some other job because architects usually design their buildings according to their own measurements and the measurements on this building were of extraordinary dimension, very wide and very high, and this construction as to windows was old-fashioned, double hung windows which nobody uses nowadays (S. F., p. 391).

We made deliveries to the building at various times up to July 31st and we had quite a quantity of window frames made at our factory and also at the warehouse, and we invoiced these and received part payment and payment was made largely on goods at the factory (S. F., p. 398). Mr. Webber visited the warehouse on Pacific Avenue and also came out to the factory about August 10th and inspected the window frames and Mr. Wells accompanied him, Mr. Wells being the superintendent of construction. Later Mr. Drury came out and saw the work and stated he was well pleased and wished us to hurry the work along (S. F., p. 392). Mr. Lindberg, one of the directors of the Building Company *the* Bank was also there.

About December 30th, 1921, we had correspondence with Mr. Wells urging him to relieve us of the stuff at the factory and to take over the stuff at the warehouse.

(Testimony of C. C. Sharpe.)

Exhibits #166 and #167 indicate this correspondence, one is a letter signed by myself in behalf of the Company and the other is a letter signed by Mr. Wells. These exhibits appear at the close of this evidence. We were at that time pretty well along with the entire contract. We ceased work January 15, 1921, at 4:30 in the afternoon and began work, prepared drawings on this contract, on the 18th day of February, 1920, we contracted for a large supply of mahogany lumber, on the following day ordered some of the raw material that went into the frames, putting the same into the dry kiln (S. F., p. 394). At that time Mr. Webber and Mr. Drury knew [524] that we were to do this work at our factory by way of assembling the material and specially constructing it. (S. F., p. 394). The proposal of February 17th, accepted by Mr. Webber, contains the following phraseology: "Owing to the great quantity of this work and our limited storage facility it will be necessary that we ask you to provide storage space and accept delivery as fast as manufactured."

"Q. Later on did you have a talk with them from time to time as the contract, as to the progress you were making on the contract? A. Yes.

Q. And Mr. Wells? A. Yes."

I repeatedly, prior to writing this letter of December 30th, urged them to relieve us of this material (S. F., p. 395). Right from the start Mr. Webber urged upon us the fact that the vital thing in this contract was to get the building completed

(Testimony of C. C. Sharpe.)

before the Rust building was completed and that I would have to promise him to reserve sufficient capacity in the factory to complete the Scandinavian Building Company's order first. We obtained the Rust contract later. Mr. Drury, President of the Building Company and one of the trustees, urged us from time to time to keep after the work in that they would need it shortly. (S. F., p. 396.)

I asked them to take the frames off of our hands when a considerable portion had been worked up and Mr. Wells answered my letter making excuses which appears in the letter in evidence (S. F., p. 396.) We did not deliver on the building for the reason that there was no room for them there and they would not permit us to put them on the building because it would slow down the work, and for another reason, if we put it on the building, there being no roof, it would be the same as putting it in the street, it would [525] be raining and the stuff would be ruined and it was for their protection and at their own suggestion that it was kept in storage (S. F., p. 397). Prior to January 15, 1921, we rendered them an estimate for partially constructed work and asked them to accept it and allow us on account. This talk was with Mr. Wells. He okeh'd this estimate and he so stated to me. This material was partly at the factory warehouse and partly at the warehouse down town (S. F., p. 397). I had a phone conversation with him with reference to his approval of the estimate on both sets of material and I had another conversation

(Testimony of C. C. Sharpe.)

with him on the building itself (S. F., p. 398) after January 15, 1921. I asked him *if had* okeh'd our estimate for material for the month of December and he said he had. Later we tendered all this material to Mr. Haskell as receiver of the building. Immediately after he was appointed I tendered the key to the warehouse accompanied by a letter and stating that I understood the material came under his jurisdiction, and that he was welcome to it (S. F., p. 399). The letter of tender and the reply by Mr. Haskell are Exhibits #168 and #169 herewith. And Mr. Flick, my attorney, stated to Mr. Haskell in my presence that all of the material was his as receiver. I never received any order from him while he was receiver to place it on the building. I could not get him to take it. I had a conversation with Mr. Drury about the 15th of January about this material and also with Mr. Wells with reference to the delivery of the material that we had practically completed, in the last two days that the building was running. He was hurrying us up, wanted us to get all we possibly could up and while the steel erector had his crane in operation, and when trouble arose I talked with Mr. Drury and he said he did not see that we could do anything else but file a lien (S. F., p. 401).

When I first went into an agreement with these parties [526]

When I went into the proposal for this work about February 17, 1920, the first person I met was Mr. Frederick Webber, the architect, who in turn



(Testimony of C. C. Sharpe.)

introduced Mr. G. Wallace Simpson, to me. They came out to our factory at the same time, and that same afternoon I met them with Mr. Drury and Mr. Bean at the Tacoma Hotel. Mr. Larson stepped in. At the time I talked at the factory with Mr. Simpson and Mr. Webber, and came to an agreement that I should have the work. I handed my proposal to Mr. Webber, who after comparing it with some figures he had brought said "Well, you are in line for the work," and turning to Mr. Simpson added: "They have the best bid. Shall we let them have the work?" And Mr. Simpson said: "Yes, I don't see where we are going to better ourselves any." My dealings leading up to the formal contract were principally with Mr. Webber, Mr. Simpson and Mr. Drury. Mr. Larson was present at one conference held in Mr. Webber's office in the Tacoma Hotel, which I was told was the suite occupied by Mr. Larson. At that time Miss Carlson, who was presumably acting as secretary or stenographer for Mr. Webber, was also present. They did not take delivery of the material as fast as it was manufactured as provided for in the letter of February 17th.

Cross-examination.

(By Mr. OAKLEY.)

(We quote *verbatim* at this point from the record, beginning at page 403 and concluding on line 22, page 409. Exhibits herein mentioned are attached to the close of this evidence.)

"Q. You are familiar with the terms of the con-

(Testimony of C. C. Sharpe.)

tracts—each of these three contracts in which it is specifically provided, in the typewritten part of paragraph four, that the contractor shall complete the several portions and the whole of the contract by and at the time or times hereinafter [527] stated, all of the material to be delivered and put in place so that the whole can be completed within ten months from the date of this contract, and to be delivered as fast as the building will permit. You understood that was one of the terms of your contract, did you not?

A. Pardon me; which contract do you refer to, our labor contract or our material contract?

Q. This is the \$65,000 contract.

A. That is the general material contract.

Q. This is the contract for \$30,000, and that also has the same provision in it, hasn't it?

A. We also have a provision in our contract stating that the owner was to accept delivery from us as fast as manufactured.

Q. Where is that statement?

Mr. FLICK.—That is in the general contract, in the letter.

Q. That is in the letter that was apparently written by you and it states on the face that this letter was written on the 17th of February and this contract was entered into on the 28th of February.

Mr. FLICK.—The letter is made a part of the contract by the formal contract itself, so that there may be no question. According to the estimates

(Testimony of C. C. Sharpe.)

furnished by the witness on the 17th or 18th of February,—

Mr. OAKLEY.—That is not an estimate in any sense of the word.

Mr. FLICK.—Certainly it is an estimate, it is a proposal.

Q. Do you know what was furnished you in the matter of bidding on this contract, for you to submit your bids on?

A. You are referring to the plans?

Q. Yes, there was a set of plans and a set of specifications?

A. There was a set of plans and a set of specifications.

Q. And you bid on specifications similar to these I now hand you, did you not?

A. If these contained the carpentry specifications, I presume they are the same. They look different though, entirely from mine. Mine were blue-print specifications. This may be something entirely foreign to my specifications.

Q. I show you these specifications,—these are the specifications you bid on (referring to another package of papers). A. Yes. [528]

Q. When was this submitted to you?

A. At the time of bidding.

Q. At what time did you bid?

A. I bid prior to February 17, 1920, just the *exact* I do not know.

Q. These are what you bid on?

A. I based by contract on that.

(Testimony of C. C. Sharpe.)

Mr. OAKLEY.—I offer these specifications in evidence.

Mr. FLICK.—No objections.

(Said specifications were received in evidence and marked as Exhibit 169 (Receiver).)

Q. What material did you actually deliver to the building here?

A. I maintain I made delivery of all of the items I am suing for in my schedule.

Q. I ask you specifically what items you delivered on the premises here?

A. If you will allow me to refer to the schedule I can point out those items.

(Witness here referred to Exhibit 154.)

Q. You want to know what went on the building site?

Q. Yes, how many window openings did you deliver?

A. Where, to the building site?

Q. Yes, to the building site.

A. Our record shows 691 openings.

Q. What was the total provided for in the contract?

A. 929 openings according to our interpretation of the contract.

Q. Now, how many of those were completed and manufactured by you?

A. All entirely completed and painted.

Q. How many window sash did you deliver on the building premises?

(Testimony of C. C. Sharpe.)

A. There has been no window sash delivered on the building premises. [529]

Q. There have been no sash. Have there been any other items except 691 window openings delivered on the premises?

A. Yes, there has been. There is Exhibit "E," 80 pieces of scaffold bucks on open account April 20th.

Q. I am speaking of the contract. I am not questioning the open account.

A. These are all parts of the same.

Q. Entirely under your contract, how much did you furnish there other than you have stated?

A. There is nothing else on the building I know of other than the window frames on this contract.

Q. You invoiced certain of this material?

The COURT.—Are window frames and window openings synonymous?

A. A frame like that, for instance (indicating window in courtroom) contains what we term three openings. It is a triple window frame. If it is simply for one sash, we call it a single opening, and if there are two, we call it two openings. That building had mostly double frames, so that each window frame I would call two openings.

Q. You said 691 window openings? A. Yes.

Q. And you mentioned nothing else besides window frames?

A. The sash that go in there were not furnished to the building site.



(Testimony of C. C. Sharpe.)

Q. Were window openings and window sash two different things?

A. Yes, the sash are the frames that contain the glass for raising and lowering, and the frame contains the sash itself.

(By Mr. OAKLEY.)

Q. Have you been paid anything on this account?

A. Yes, we have been paid some on account.

Q. How much have you been paid on account?

A. Account of contract, or on the open contract?

Q. On the contract.

A. We show one amount of \$5,100 August 16th, and \$1,132.50 paid on September 18th.

Q. Did you say that was fifty-one hundred?

A. Yes. [530]

Q. I wish you would take this voucher of the Tacoma Millwork & Supply Co. (Counsel hands witness a paper.)

A. Yes.

Q. Is that the item for which you were paid?

A. Well, this is the item for window frames as invoiced them, but I am not saying it belonged to that particular item. Our contract did not state where it should be applied.

Q. Did you invoice any other items than 680 window frames or openings to the Building Company at any time?

A. Later we invoiced some more to them.

Q. Have you got copies of those invoices?

A. I believe I have.

Q. Here, is it?

(Testimony of C. C. Sharpe.)

A. This is that small one, this is one here (indicating papers).

Q. Then on July 30, 1920, you invoiced 680 window frames openings? A. Yes.

Q. And that amounted to \$6,800 and you were given a check of 75% on that amount, as provided for in the contract were you not?

A. We were given \$5,100.

Q. That was 75% was it? You were paid 75%?

A. Approximately. I have not figured it out.

(Said invoice or estimate of Millwork Co. July 30, 1920, for \$6800 together with voucher attached, was offered and received in evidence and marked Exhibit 170 (Receiver).)

Q. I show you another one of like nature dated August 30th, 1920; that is for various items of window frames? A. Yes.

Q. It says, total openings 831 less 680; that was part of the other voucher here, wasn't it?

A. I believe it was.

Q. So that this was for 151 openings at \$10 an opening, \$1,510 so that you were paid 75% of that or \$1,322.50. [531]

A. We were paid that amount.

Q. Yes? A. Yes, sir.

(Said invoice or estimate of Millwork Co. Aug. 2, 1920, for \$1510 was offered and received in evidence and marked Exhibit 171 (Receiver).)

Q. So that you were paid 75% of each and every item that was actually delivered upon the building itself, the building premises?

(Testimony of C. C. Sharpe.)

A. No, you are mistaken there.

Q. That is what I want to straighten out.

A. There is some of these frames that are still at the factory, and that invoice may have cover them. I do not know as it was the particular frames that went into the building that is covered by the invoices.

Q. These invoices cover the frames, don't they?

A. They were simply a memorandum applying for some money on our account, as we needed it, not a particular sale of the goods.

Q. How many were actually delivered to the building then?

A. Well, we have a record of 691 openings.

Q. And you were paid for 831?

A. I am not sure, I am not saying as to that.

Q. Your invoices say 831, don't they?

A. That memorandum may show 831 openings, for all I know.

Q. Did you make any demand, did you send any invoices, or bills, any sort of statement to the Building Company covering materials manufactured by you and not yet delivered upon the building premises? A. Yes.

Q. To what amount?

A. They have our invoice of December 30, I believe. December 31st we billed them mahogany base and window apron trim in the amount of \$9202.50, and on January 7th there is an [532] estimate asking for \$1400.00 on window frames, these are in the bank quarters in the first floor

(Testimony of C. C. Sharpe.)  
of the building (S. F., p. 409) and on January 6th there is an invoice for \$2,842.00 for 812 pieces of sash in the warehouse (S. F., p. 410). The labor contract was for \$30,000 and was for going into the building there after this material was placed on the building and then setting up this same millwork which we were furnishing under the first contract known as the material contract which specified a total of \$65,000 (S. F., pp. 410). There was quite a bit of labor performed under this labor contract, such as trimming the window sash so that they could be put into the frame without much or further work at the building (S. F., p. 410). This was not included in the material contract at all but would be work for the contractor or the one in charge of the building, this additional work. We would simply furnish it in the customary way (S. F., p. 411). I am speaking of the fit of the sash and of the additional work that would ordinarily be done on the building on our material by an independent laborer or contractor, such as trimming off the stiles of the sash, trimming off the bottom of the stiles and seeing that those fit without further work. Again we built up the window casings, mitered them together and glued them up, also the door casings, and thus save ourselves that expense on the building and thereby facilitate the work.

The \$65,000 covered merely the furnishing of the bare materials. We did not agree to deliver any of it, the company was to accept delivery from

(Testimony of C. C. Sharpe.)

us and it is obvious under the material contract that we did not have to put it in place. We would deliver it to the building at the best. That term—delivered there—put in place is a general form of contract, and that phrase there did not apply to furnishing materials only. That phrase applied to every kind of subcontractor who furnishes both labor and material on the [533] building. We performed under the \$30,000 contract \$6,043 worth of work entirely separate from the material contract. Mr. Webber accepted our proposal to furnish the material on the 17th of February and on the following morning he accepted the proposal to do the additional labor work and take the place of the carpenter on the job. He signed one on the 17th and one on the 18th, and the proposals for both contracts were being considered practically the same day, one in the forenoon and one in the afternoon.

(S. F., p. 414.) Direct Examination.

(By Mr. FLICK.)

The liens filed by the Tacoma Millwork Supply Co. were at this point received in evidence and marked Exhibits #172, #173 and #174 and are attached to the close of this evidence.

At Mr. Webber's request we rented the storehouse at 2140 Pacific Avenue and paid the rent, and at times had workmen there, and we had our material there covered by fire insurance and still have material in the same place, and in our factory



(Testimony of C. C. Sharpe.)

as well. I wrote the letter of August 3, 1920, which is in evidence as Exhibit 175, and which is addressed to Mr. Frederick Webber, architect, and reads as follows:

“In reply to your phone conversation in regard to the storage insurance and delivery of the millwork in storage for the Scandinavian-American Bank Building, we wish to state as follows:

We have and will keep the material in storage fully insured against fire loss, and in the event of fire loss we hereby agree to reimburse you to the full extent of your interest therein.

Also we agree to deliver all of this material to the building site upon your order.

We wish to state, too, that we will bear the expense of this accommodation ourselves as it is our desire and Mr. Webber's wish that we expedite the manufacture of this material and he acquiesced in this plan of procedure.”

Exhibits 170 and 171 contain specific amounts both as to [534] quantity and as to totalization and are estimates submitted to the architect. The basis of \$10 per opening is slightly less than the reasonable value, that is true of the window frames. We are not attempting to fix any value whatsoever but gave these in the form of memorandum so as to get a certain amount of money so that might apply on account of our contracts (S. F., p. 415). The \$10 for a window opening is merely an estimate and is underestimated for the reason that if we

(Testimony of C. C. Sharpe.)

had overestimated it at the time we presented it they would have gone over it, sent it back and we would not have gotten our claim through. Exhibit #176 is along the same plan and is all for the purpose of submitting an estimate to obtain money on account and I do not think that in these estimates our profits are included (S. F., p. 415).

Cross-examination.

(By Mr. OAKLEY.)

On the last sheet of Exhibit #154, Exhibits "A" to "G," inclusive, the total claim is \$68,748.33, then we gave a credit of \$6240.50 and these items were made up about the time we filed the lien and the balance due we claim was \$62,500 and to this we have added profit we were entitled to on the balance of the labor contract or \$6,000 and profit that we were entitled to on the balance of the main contract and bank contract \$1,000, making a total balance of \$69,507.83 and this includes the item of profit we would have made if the contract had been carried out. We figure slightly less than ten per cent. I signed these three contracts put in evidence for the Mill company. I signed the contracts for the mill company at the factory, my brother and sister being present. These contracts had not yet been signed by the building company (S. F., p. 417). Four or five copies were signed and were all turned over to Mr. Webber and one copy of the contract was returned to us. There is a provision as follows in this contract, viz: Ex-

(Testimony of C. C. Sharpe.)

hibit 151 [535] found at the close of this evidence.

“All the work aforementioned to be delivered and put in place so that the whole can be completed in ten months from the date of this contract and to be delivered as fast as the building will permit.”

A. I subsequently agreed to do it.

Q. You subsequently agreed to do it?

A. I agreed, according to the contract, to take my own material and go into that building and take the place of the carpenter and put it up; that is what I agreed to do.

Q. You agreed to furnish this material and put it in the building?

A. I agreed to do both, yes. (S. F., p. 419.)

Q. (By Mr. OAKLEY.) What has become of the \$10,500 you claim in your notice of lien, exhibit 172, you sustained as damages for breach of the \$30,000 contract? You have not testified about it in this action on the witness-stand.

A. I never saw any.

Q. You never saw this lien?

A. You asked me what became of the \$10,500, did you not?

Q. Yes.

A. Well, I have not seen it. (S. F., p. 420.)

The \$6,000 worth of work was performed on the labor contract known as the \$30,000 contract (S. F., p. 420). This was so that the millwork could be put in at the building more expeditiously and was for additional work on material that we had

(Testimony of C. C. Sharpe.)

manufactured (S. F., p. 421), and if we did not do it at the factory we would have had to do it at the building.

It is admitted that the \$6,000 is included in the \$10,500 referred to in Lien Exhibit #172. To the best of my judgment the work was 90 per cent complete on this material contract. (S. F., p. 423). We had finished 90 per cent of the millwork ready for delivery. The last lien filed covers the amounts claimed in the first liens. [536] (S. F., p. 424.) The six thousand and odd dollars embraced in the lien for work on the \$30,000 contract is embraced in the labor contract. Our men did the work to the amount of \$6,043 on the \$30,000 contract at the mill (S. F., p. 426).

Mr. FLICK.—The last page of Exhibit #154 details the various contracts and the profit claimed under those contracts, such as the door buck contract, the erection of labor contract, the open contract and bonds and the profit on erection (S. F., p. 426). At the time when we signed those contracts we attached a rider stating in effect that the lien would be revived if the building company did not make its payments (S. F., p. 427). I prepared the rider. I submitted it through my brother to Mr. Drury, and his associates.

“Q. (By Mr. FLICK.) I will ask you about when that was in reference to those proposals.

A. It was some time between the 20th and 28th.

Mr. OAKLEY.—I wish to object to that, it is

(Testimony of C. C. Sharpe.)

incompetent, irrelevant and immaterial; the contract is a written contract finally agreed upon by the parties and signed, and it contains all of the terms of this contract, and it seems to me it is just simply an attempt to vary the terms of that contract.

The COURT.—Whether it is altered in such a way as to amount to fraud or not—

Mr. LANGHORNE.—I want to ask, is there any allegation in the cross-complaint to that effect?

Mr. OAKLEY.—No.

Mr. FLICK.—Fraud and overreaching, surely.

Mr. LANGHORNE.—Is there any allegation that the contract as finally signed—(interrupted).

Mr. FLICK.—Sure.

Mr. LANGHORNE.—(Continuing.) —did not express its true terms?

Mr. FLICK.—Certainly. [537]

Mr. LANGHORNE.—By leaving out—

Mr. FLICK.—In the leaving out of this one item, but this is simply preliminary to the general fraud perpetrated.

Mr. LANGHORNE.—I did not see any such allegation in the complaint.

Mr. FLICK.—There is not, not along on this subject matter, but that is simply an element of fraud that entered into this thing.

Mr. LANGHORNE.—I submit if that be true there could not be any element of fraud in regard to that, but the cross-complaint should contain



(Testimony of C. C. Sharpe.)

the proper allegations in reference to reforming the contract to speak the truth.

The COURT.—That may be, if this were the only thing dependent upon to establish fraud, he cannot without pleading it prove it so as to enable him under the general prayer to reform the contract, yet it would be a circumstance bearing upon some other thing claimed as fraud.

Mr. FLICK.—That is all we are seeking to bring out in this connection.

The COURT.—The objection is overruled and I will try to rule out what is objectionable after the evidence is in, and not keep it out, at this time.” (S. F., pp. 427, 428, 429).

I instructed my brother not to turn over these contracts, which I had already signed at the factory, to Mr. Webber or Mr. Drury of the building company or its officers unless they accepted the rider reviving the lien. Then my brother phoned me in their presence that they objected and that all contracts must read exactly alike, that there were no other riders or alterations in anybody else's contracts and that Mr. Drury stated that they had \$400,000 cash on hand and a mortgage commitment for \$600,000 which would be the completion money and that there was no need of worrying and that if we were skeptical we could have the money in advance. I said, “If that is the case I don't mind taking \$15,000 right now. Will you let me have it on account?” and he said, “Certainly, but I will have to see Mr. Larson and

(Testimony of C. C. Sharpe.)

fix it with him." I came down [538] the next morning and took it up with Mr. Larson and it was arranged, but they required me to give a note, the excuse being that all the contract had not been entirely signed up for and the deal was not entirely completed, and it would be necessary for me to give the bank a note, but that it did not make any difference because they would take the note out of my last estimate due on the building. Every time the renewal of the note came up I mentioned the fact to Mr. Larson that our contract was not done, and that we could not pay it until it was taken out of our last estimate, and he nodded assent. (S. F., pp. 433, 434.) That Mr. Drury had stated that the steel people (McClintic-Marshall Company) and the terra cotta people has signed as well identical contracts (waiving the lien) (S. F., p. 432). I told my brother that if they had given him these assurances that we would have to submit to like terms (S. F., p. 433). About a week later we received our contract back. The following day I had a similar conversation with Mr. Drury in person and received practically similar assurances given to my brother (S. F., p. 433).

The record shows (pages —), that the manager of the McClintic people had not then agreed to waive their lien, but had distinctly reserved it (See also Exhibit "F," the contract), and that the terra cotta people had not waived their lien but had distinctly reserved it (Page 296, see also their con-

(Testimony of C. C. Sharpe.)

tract Exhibit 136). All exhibits being attached at close of evidence.

When I talked with Mr. Wells about the 6th or 8th of January, 1921, to the effect that the material was accumulating and we ought to make deliveries, he said: "Well, we won't take it on the building, you can see the shape the building is in, it is impossible. I am doing the best I can to take material off your hands. I cannot take it off your hands right now, but expect to [539] take some shortly." We had shown him on the memorandum furnished him how much was already in storage ready for them and had told him that we were pretty well along. I was after him all the time to take it out of the factory, and he replied he could not take any of it because he had no place to put it (S. F., p. 436). Under this material contract where lumber has been ripped up and cut to length it is a loss, but I did not take that into consideration (S. F., p. 437).

Recross-examination.

(By Mr. OAKLEY.)

"Q. You had in mind then the clause of this contract by which you waived or agreed to waive the lien in this case? A. Yes.

Q. Now, you knew that that clause did not mean anything at all if the contract was carried through, didn't you.

A. Well, if they would go through with that \$600,000.00 mortgage money for the completion of the building, we would be taken care of, of course.

(Testimony of C. C. Sharpe.)

Q. You do not answer my question. (Question repeated.) A. Yes.

Q. And you knew that clause was only of value to anybody when the contract was breached, didn't you? A. No, I did not know that.

Q. And if you had been paid there would have been no use. A. No.

Q. Now, you were speaking something of a rider. Have you any copies of that?

A. No. We left all the copies on the contracts: they should be in your files.

Q. Why didn't you keep a copy yourself?

A. Never occurred to me that they would not sign them up the way they were, and I would get it back.

Q. You signed that contract then knowing that you had waived your right of lien? [540]

A. I signed part of that contract. Now, let me make it clear. In the first place Mr. Webber had accepted our proposal and in that we waived no rights and we made our own terms of payment, etc. I started in immediately the next day at his request to perform work on that and I had gone on for perhaps a week before I ever saw this formal contract. I did not think that they would require a waiver of the lien after I had started work and when that came up that put another phase to the matter.

Q. You may state whether or not you were told that the company was negotiating for a loan with the Metropolitan Life Insurance Company and that

(Testimony of C. C. Sharpe.)

in order to get the loan there would have to be a lien waiver clause in your contract.

A. That is what I understood.

Q. Now, you were not told that they had the loan made at that time, were you?

A. Yes, I was told that they had the—well, in fact Mr. Simpson said that they had had the loan about completed.

Q. About completed? A. Yes.

Q. Was Mr. Simpson representing the Building Company in getting this loan from the Insurance Company?

A. It appeared to me, that he was acting for the Building Company and seemed to have lots of authority for them.

Q. He did not tell you that. What did he say?

A. He said that they had the building entirely financed and I presumed from that that this money was all to wind up the contracts, to complete the proposition.

Q. When these contracts were executed finally and definitely there were no changes in the contracts other than the one you have introduced here in evidence as you claim?

A. There was no after change,—the only change after I signed the contracts was the absence of the riders, they came back to me minus the riders after I had already signed.

Q. You went ahead and did all of this work knowing there were no riders on these contracts in reference to the waiver of the lien clause? A. Yes.



(Testimony of C. C. Sharpe.)

The COURT.—That applies both to the \$30,000.00 contract and the other contract?

A. Yes, all the way through with the excepting of what I [541] had started on before I received the contracts, and the open account. In the open account I waived no lien rights whatever.

Q. How much was in the open account?

A. Not very much.

Mr. LANGHORNE.—I think your honor misunderstood the testimony of the witness, the tenor of the testimony. He testified after his brother reported to him that Drury and Webber said all of these other contracts had the clause waiving the lien and he then consented. I do not understand whether you got that or not.

The COURT.—Yes.”

#### Redirect Examination.

(By Mr. FLICK.)

I relied upon the statement that the \$600,000 mortgage was absolutely financed and upon the statement that they had \$400,000 cash on hand. I had had certain business relations with Mr. Drury for a number of years and I would not have signed these contracts if I had not relied on his statement that the financing had been completed (S. F., p. 441), because I had already in my possession a proposal that they had accepted (S. F., p. 442). They stated to me that they had a commitment from the Metropolitan Life Insurance Company (S. F., pp. 442).

Mr. OAKLEY.—It is a conditional commitment. Mr. Drury told my brother, as I understood it, that

(Testimony of C. C. Sharpe.)

the steel people and the terra cotta people had signed a similar contract waiving their liens (S. F., p. 443). The contract with the McClintic-Marshall company is submitted in evidence and the contract of the terra cotta company with the Washington Brick Lime and Cement Company is also admitted (S. F., pp. 444).

Recross-examination.

(By Mr. OAKLEY.)

Q. After Mr. Drury told us that we could have the money in advance I asked him if he would let us have \$15,000 on account. [542] I got it, but I had to sign for it on a personal or firm note, on which I paid interest. I also paid back that note. The two contracts designated as a material contract and erection contract are dated alike and combined they provided for the installation in place of the interior millwork. (S. of F., pp. 445-446.)

The \$65,000 contract, Exhibit #151, embraces all labor necessary to turn a raw product into the finished millwork (S. F., pp. 446.) The carpenter would prepare the doors for hardware and putting them in place and hang them. The doors could not be made to exact dimension, they would be made to detail but not to exact dimension, the fitting would have to be done on the job under the labor contract (S. F., pp. 447.)

In our last lien, filed, Exhibit 174, the item of \$6043 is the amount of labor performed on the erection contract, and the other item of \$6,000 is a claim for our profit over and above the reasonable

(Testimony of C. C. Sharpe.)

value of the labor done on the erection contract. This \$6,000 would have been part of the profit only. I didn't try to get it all. I expected to make more than \$6,000, more than twenty per cent in that labor contract if they had fulfilled it. I said that the total profit on this job would amount to approximately speaking ten per cent of the total contract, material and labor as well. The lien is based upon the value of the goods when made, material and labor enters into that value, but just what proportion was labor and what material I could not say.

“Q. When you originally submitted your proposals you expected like in all other jobs of this size a formal contract would be entered into, did you not?”

A. I did not know what they intended on that score.

Q. Well, didn't you expect a formal contract; hasn't it been your experience that in cases of this kind a formal contract was entered into. [543]

A. No, I can cite you to the Rust Building contract. That was all done on an acceptance to a letter. No formal contract whatever. I had identical arrangements there with these people and I expected that when Mr. Webber had accepted our proposal that was going to constitute our agreement and there would be no further contracts coming up which would be signed, formal contracts.

Q. But there was a formal contract presented to you? A. Yes, there was later.

Q. And you, as you have testified, did execute that

(Testimony of C. C. Sharpe.)

contract? A. Yes, yes I am not denying that.

Q. And performed what work you did under that contract. A. Yes."

(Questions by Mr. BEDFORD.)

The labor performed in this building, that is distinct labor, was performed by my men (S. F., p. 453).

Redirect Examination.

(By Mr. FLICK.)

I found out when the bank failed (about January 15, 1921) that this building company did not have \$400,000 or any appreciable part of it. I did not find out until long after filing our first lien that the building company never had a definite commitment under the \$600,000 mortgage (S. F., p. 454).

**Testimony of R. L. Reedy, for Tacoma Millwork Supply Company.**

R. L. REEDY, called as witness for Tacoma Millwork Supply Company.

Direct Examination.

(By Mr. FLICK.)

I am sales manager for Wheeler Osgood Company. Considering the time and the character of the work I think the prices submitted by the Millwork Company on its material fair (S. F., p. 456). This character of material shown in Exhibit #154 is known as special work and when once cut and manufactured for a particular job it is very improbable that it could be used for any other purpose to any profit. (S. F., p. 457.) [544]

**Testimony of George T. Davis, for Tacoma Millwork Supply Company.**

GEORGE T. DAVIS, called by Tacoma Millwork Supply Co.

Direct Examination.

(By Mr. FLICK.)

I am assistant manager of the Tacoma Millwork Supply Company and have been engaged in that work six years making estimates etc. The prices shown in Exhibit #154 are very reasonable (S. F., pp. 648). Those pieces marked "No Claim" are partially worked up material but is still useful to us and for these we submit no claim. We had the material contract about 90 per cent complete (S. F., p. 649), and our charges are only for fabricated material either complete or in an advanced form ready to set up in the building by merely dovetailing or something of that kind, or in the case of stiles which are unusable elsewhere (S. F., p. 649). This material so fabricated is unusable except in this building, it has been made to specific sizes. The window frames, for instance, have to fit these terra cotta openings and steel openings, the door casings must fit these specific doors, and these casings fit these casings only. The window casings are made for these particular window frames (S. F., p. 650.)

The character of this material and work is unique and different for instance from the modern Rust Building across the street (S. F., p. 650). It is an older style of construction and it is almost impos-



(Testimony of George T. Davis.)

sible for this reason to get rid of it, there is no market. (S. F., p. 650.) It is very difficult to keep this expensive mahogany veneer after it has been run. The atmosphere will affect it and twist it. (S. F., p. 651.)

When I first met Mr. Webber it was in Mr. Larson's rooms. Mr. Simpson was present (S. F., p. 651). I gave Mr. Webber the figures verbally and he thought they were all right. He said he would visit the mill and see if we had ample capacity to [545] get the job out on time. While I was talking with Mr. Webber Mr. Drury came in saying that "Mr. Webber is our architect" and told Mr. Webber that any arrangement you can make with them (the Millwork Company) is satisfactory to me (S. F., p. 652). At the mill Mr. Webber concluded to give us the contract and on that day we tendered the proposals in evidence (S. F., p. 653), which are attached to the contracts and which are accepted by Mr. Webber. Then we commenced work (S. F., p. 653). We submitted detail drawings and bought green lumber and put it in the dry kiln, and immediately upon acceptance by Mr. Webber we contracted for mahogany lumber, paying \$5,000 the following day to be sure to hold it (S. F., p. 654). This before we knew that there was to be a formal contract. We first learned of the formal contract about the 25th of February (S. F., p. 654). When I brought the contracts to my brother we went over them carefully and saw the waiver of lien clause and finally drew a rider

(Testimony of George T. Davis.)

to offset it (S. F., p. 655), similar to the one my brother spoke of, and then we signed the contracts at our office and I brought them back to Mr. Webber with the rider attached with the understanding that I would leave these contracts for signature by the building company with the rider on. Mr. Drury objected strenuously to any alteration of the contracts (S. F., p. 655) and I asked him why. He says, "In the first place, we have the money. We have \$400,000 on hand, we have \$600,000 mortgage for the completion money"; and I hesitated and did not say anything, and he says: "Furthermore," he says, "these are an eastern form of contract," he says, "to my experience they won't hold in this State anyway," he says, "You know a contract is mutual, if we don't pay," he says, "the contract is broken, and you automatically get your lien back." (S. F., p. 656.)

Mr. Simpson, Mr. Larson, Miss Carlson, Mr. Larson's secretary, and Mr. Webber were present. Mr. Drury assured me that [546] if we were in doubt we could have the money in advance. He said that the contracts would have to be all alike and that the eastern finance people demanded the contracts with the waiver of lien clause (S. F., p. 656). Mr. Drury and Mr. Simpson confirmed each other by saying that the contracts must be uniform without any changes, Simpson saying that his people demanded that. Mr. Simpson was introduced as the agent of the Metropolitan Life which was financing this building, and Mr. Drury

(Testimony of George T. Davis.)

at this time said that the other people are accepting these contracts without any attachments and spoke of the steel people's contract, which he said was twice as large, and that the terra cotta people had accepted the contracts. I then called my brother, in their presence, on the phone stating Mr. Drury's refusal of the special rider, telling him the reasons that these gentlemen had just given me, and told my brother that Mr. Drury had assured me that the other people had all waived a right to lien. My brother has already repeated this conversation (S. F., p. 658), and I repeated his conversation to the gentlemen in the room. The riders remained attached when I left, but it was understood that under the assurances given and with the understanding had that the riders might be detached (S. F., p. 659).

We talked with Mr. Wells several times and begged relief from the overflow of material at the factory, and Wells said: "All you can do is keep it, I cannot put it on the building, you can see for yourself the condition the building is in" (S. F., p. 659). Our understanding with Mr. Webber was that they would take it as fast as manufactured in accordance with our written agreement. I personally showed Mr. Webber and Mr. Wells through our warehouse on the avenue and through our warehouse at the factory and spoke to him about the accumulating charges for rent, etc., and insurance, and he told us that the rent and matter of insurance would be taken care of on [547] final accounting.

(Testimony of George T. Davis.)

We then wrote a letter to Mr. Wells along about January 6th urging him to take this matter up and we received a reply stating that he could not take the material (S. F., p. 660).

The material would have been spoiled if it had been left where water and rain could get to it, which would have resulted if it had been delivered on the building as rapidly as manufactured, and would have been a heavy loss to the building company. In his letters he says: "We cannot see a way clear to receive the frames at the job right away." It is never customary to deliver this character of material on the premises until there is a roof on the building, and the building is in good shape to take care of it.

I delivered the key to the warehouse to Mr. Haskell. At that time payment had been made on account which would cover some work at the warehouse and some work at the factory (S. F., p. 661). Exhibit #168 is the letter accompanying the tender. Mr. Kelley was in the office with Mr. Haskell. Mr. Kelley read the letter, saying: "It is pretty good evidence I guess we will keep it." I then walked out and I next heard from them by Mr. Haskell calling our office when he said, "I have no use for this key. You had better call for it." We ignored them and then about an hour or so he sent the key back with a special messenger accompanied by a letter of which Exhibit #169 is a copy, dated March 8th, our tender letter being dated March 8th. We were at all times ready to deliver this material

(Testimony of George T. Davis.)

to the receiver and at all times ready to deliver material to Mr. Wells or the building company, in fact we urged them to take the material.

“Q. Was there any agreement verbal or otherwise, initially that you should store this material?

Mr. OAKLEY.—I object to that. The contract itself provided for delivery on the building. There is a general clause there containing that provision of the contract. It says “All negotiations or agreements oral or written prior to [548] this agreement are merged herein,” etc.

The COURT.—That may be the final ruling, but I will overrule the objection.

(Question read.)

A. We had an agreement with Mr. Webber,—well, in fact, when we first made this proposal I said to Mr. Webber, Now, you want this material, you want it right away, what are you going to do with it?

Q. What was his answer; what was his reason for wanting this material so urgently?

A. He told us, to get that building completed before the Rust Building and to give their painters ample time for painting the material, to do the painting work that had to be done on it.

Q. Who stated to you they wanted to finish it before the Rust Building was finished?

A. Why, Mr. Webber.

Q. For what reason did he express?

A. Mr. Webber and Mr. Wells,—

Q. Did he express a reason?



(Testimony of George T. Davis.)

A. I believe the reason was that the sooner they got it completed, the sooner they could get it rented and get ahead of the Rust people; in fact, I was given to understand that was one reason why we had to get that out and not have any delay.

Q. What did they say in response to your proposition that if you got it out as rapidly as that, what would be done with it?

A. Why, he told us to find some storage provisions somewhere; store it in the factory and let the overflow go into some warehouse somewhere and we will accept it that way and make payments on it as manufactured, and as you notify us, we will have our painters start work on it.

Q. Did you notify them from time to time that the materials were ready for painting? A. Yes.

Q. Did the Atlas Paint Company from time to time go in there and do the work of priming and painting, both at the warehouse and at the factory.

A. It was practically all primed at the factory and some at the warehouse.

Q. And this painter was in the employ, not of yourself, [549] but of the building company?

A. As I understand it, he had a contract with the building company. (S. F., p. 665.)

Q. Did you, or did you not, show Mr. Bean and Mr. Lindberg through the warehouse and factory and show them what you had finished for them?

A. Yes, I did.

Q. And in taking Mr. Wells through the factory

(Testimony of George T. Davis.)

and warehouse state whether or not he accepted it and approved it?

A. Yes, sir, he okehed our invoice or our estimates." (S. F., p. 665.)

These estimates applied to both places, the factory warehouse and the warehouse on the avenue, and payments were made both on material in the avenue warehouse and upon material at the factory (S. F., p. 665), and the acceptance by Mr. Wells were both of the material at the factory and the material at the warehouse (S. F. p. 665). Mr. Drury was through the factory with us and spoke highly of the material as did Mr. Lindberg. We pointed out the congestion at the factory to Mr. Drury when he made the excuse that the building was not far enough along, and that he did not see how they could take it, that it was up to Mr. Wells to take it when he could (S. F., p. 666). We relied absolutely upon the representations made about money on hand and about the mortgage fund for completion. Mr. Drury himself had done business with our company for sixteen or seventeen years.

Cross-examination.

(By Mr. OAKLEY.)

The proposals were written the 17th day of February, 1920, and Mr. Webber accepted these proposals February the 18th and we commenced work February the 19th. I brought the \$65,000 proposal to Mr. Webber in the late afternoon of February the 17th. We had been figuring a week or two in

(Testimony of George T. Davis.)

advance (S. F., p. 668), and we knew [550] the details that would go into that building a week before I saw Mr. Webber, approximately. (S. F., p. 669.) When we were called back to receive the formal contracts Mr. Webber had already accepted our proposals (S. F., p. 670). But we went ahead and executed a contract covering our bid of \$65,000. As to any provisions in any contract whereby the building company was to furnish storage space for the material, that we should manufacture, I believe our proposal and our letter of December 27, 1920, Exhibit #167, speak for themselves. That letter was written by the Tacoma Millwork Supply Company, by R. T. Davis.

It is true the letter says that "delivery of the frames at the building have not been actually delivered there through no fault of our own." This is letter Exhibit #167 dated December 27, 1920. Our contract was 90 per cent or better complete at that time and our proposal of the 17th is part of that contract (S. F., p. 671) and they were to take that material off our hands as fast as manufactured (S. F., p. 672), and we knew that they were to accept that material as manufactured and provide storage for it until the painters were through with it (S. F., p. 672), and the priming was to be done at our factory simply for their convenience and protection (S. F., p. 672).

Cross-examination.

(By Mr. HOLT.)

The initials "C. F." on Exhibit #154 means

(Testimony of George T. Davis.)

“complete at the factory” (and “C. W.” means “complete at warehouse”) and 90 per cent of this material contract was complete and ready for delivery as millwork at the premises (S. F., p. 673). There are several items listed in that Exhibit #154 which are incomplete and for which we are filing no claim, and it is so marked (S. F., p. 674), as for instance 18,000 lineal feet of base mold and 18,000 lineal feet of base shoe which are incomplete and for which we file no claim. [551] (S. F., p. 674). While the doors are about 75 per cent complete a general average would reach about 90 per cent for all the material. (S. F., p. 676.)

Redirect Examination.

(By Mr. FLICK.)

We had nothing to do with the painting or priming. We were through with the material when it was manufactured. The letter referred to by Mr. Oakley contains the following clause: “Owing to the great quantity of this work and our limited storage facility, it will be necessary that we ask you to provide dry storage space and accept delivery as fast as manufactured. And that was in accordance with our agreement.

“The COURT.—Is that in the proposal alone or in the formal contract?

By Mr. FLICK.—It is in the proposal accepted by Mr. Webber, accepted by his own original signature (see Exhibit attached).

The COURT.—Nothing said about the delivery of it in the formal contract?

(Testimony of George T. Davis.)

By Mr. METZGER.—This formal contract provides specifically for delivering it as fast as required.

By Mr. FLICK.—Yes, as fast as the building should permit, and the formal contract makes this proposal a part of the contract by referring to the proposal of February 17th and 18th, in the formal contract itself.” (S. F., p. 680.)

*Cross-examination.*

(By Mr. METZGER.)

We made the proposals on February the 17th and the written acceptance of them came the next day. The formal contract was submitted to us about February 25, and I examined these formal contracts very carefully in detail with my brother, familiarizing myself with every clause in them before I signed. My brother went through the whole printed contract and as the result of that careful inspection discovered the waiver of lien, and thereupon prepared a [552] rider which was attached with a clip. I have no copy of that rider (S. of F., 680, 682). We placed our order for mahogany February the 19th (S. F., p. 682). We put fir stock into the dry kiln and was intended for this job it being of a special size (S. F., p. 683). We have all the panels for each door made, all the rails and all the stiles complete, but the doors have not been glued up (S. F., p. 685). The work under the \$30,000 contract included some of the work of mitering, gluing up, rabbetting the bottoms. It



(Testimony of George T. Davis.)

is more convenient to do this at the factory (S. F., p. 688). While I did some of this myself we did it mostly with our employees. I was assistant manager (S. F., p. 688), my brother was the general manager, and I did some of the work myself on machines in the factory.

Redirect Examination.

(By Mr. FLICK.)

These panels are special and are made to detail, but they are odd sizes. The green lumber put into the dry kiln went into this job (S. F., p. 690). We ordered the mahogany February the 19th and on February the 26th the Erlich Harrison Company, who handled the mahogany, acknowledged our check for \$5,000 and definitely committed themselves.

Recross-examination.

(By Mr. METZGER.)

The dimension width and height of these doors makes them unusual, the thickness and the width of the stiles make them unusual (S. F., p. 691). We were under a demurrage charge of \$50.00 a day if we did not complete this contract in time (S. F., p. 872).

**Testimony of C. D. Lindstrom, for Tacoma Mill-work Supply Company.**

C. D. LINDSTROM, witness for Tacoma Mill-work Supply Co.

Direct Examination.

(By Mr. FLICK.)

I have been in the interior finishing and cabinet

(Testimony of C. D. Lindstrom.)

[553] business in the city of Tacoma 27 or 28 years, such as fine bank work and fixtures, residence interiors and special work. It is always made upon architect's specifications and drawings and is known as special work. I looked over the list showing prices and commodities as submitted by the Millwork Company and I consider their prices very fair (S. F., p. 694). In this character of work if it cannot be used in the particular building that it is designed for it is very hard to use this material, it is built for a special purpose for a certain space or opening and is almost impossible to find the same openings, the same depth and wall, and if you go to cutting it to pieces after it is put together in the frame you do not salvage much out of it, there is very little salvage. (S. F., p. 694.) The window frames and casings are absolutely valueless for anything else (S. F., p. 694), and unless you got an order for the same dimension and thickness and size for the doors they would have very little value. It has always been my experience that you are very lucky if you can use anything of special design such as this (S. F., p. 695). I do not see much chance for the disposal of this material. It would be necessary to use this material in this particular building to get any money out of it at all, and this work that is made up under ordinary conditions is practically valueless (S. F., p. 695). Prices given are reasonable as of that time, and the work is good quality. (S. F., p. 696). It was very near what I would con-

(Testimony of C. D. Lindstrom.)

sider a cabinet job of work that I saw. The work I saw was good work.

“The COURT.—Have you made up your mind as to the salvage value of the work.

A. No, sir; I have not.

Mr. FLICK.—We will have him do that. I will ask you, Mr. Lindstrom, to do that for us. I will say this, that we are not liening for anything that is not made up, and when you [554] speak of that that is made up you mean that which is mitered,—

A. The framework and everything ready to go right on the wall, set right up.

The COURT.—You are not liening for the rip on that that is sawed for length.

Mr. FLICK.—No, your Honor, I understand Mr. Davis is not liening for anything that is at all usable, that is simply ripped or sawed to length, except—

Mr. OAKLEY.—I understand that it is the baseboards and mouldings and all that, that is not cut; it is not cut for this particular building. He said it had to be cut when they got into the building. That is part of the \$30,000.00 contract.

Mr. FLICK.—We are not liening for anything that is simply cut and is still otherwise in its raw state, but we are liening for baseboards and mouldings and those things that have had for instance two long grooves cut in them that must fit in a special space, and it is absolutely valueless for any other

(Testimony of C. D. Lindstrom.)

place. I will have Mr. Davis explain all that to you.

Cross-examination.

(By Mr. OAKLEY.)

Q. Now, how about those baseboards and mouldings?

A. There was a big stock of them. They were all smoothed off and all grooved on the bench. They are already cut so that they cannot be used for lumber, but they are perfectly good for baseboard any place that you can use them. They are first class baseboard where you can use that detail base and that class of material.

Q. It is used generally, isn't it?

A. No, it is not.

Q. Any place around here you have seen it?

A. No, that Philippine mahogany is not used."

There are only two buildings in Tacoma that are finished in this material. All the door stocks are cut to length and the moulding is cut to sizes as well as the headers (S. F., p. 697).

"A. I did not see any doors made up. The core was made and the big panel I think was there, but they were in the rough. The side stiles are made up; and cedar core is made and then veneered on two sides with mahogany veneer. Some of the cores [555] was fully made up and had not received the mahogany veneer on it.

Q. What percentage would you say?

A. Well, I would say that there was about half of the door stock that was finished.

(Testimony of C. D. Lindstrom.)

Q. About half of what?

A. About half; about half of the door stock was already veneered, and the other half was glued up ready for the veneer; that is, the core was glued up to receive the veneer.

Q. Had some of it been veneered?

A. Yes, I would say that about half of it was. I would say that there was fully half of it. I did not go over it carefully. There were two piles of it.

Q. How about the use of these doors in any other building?

A. These doors could be used any place where you can get that length of door and the thickness. They are a thick door. A little out of the ordinary. They are a 2" door, that is something that is very seldom specified.

Q. That thickness is very seldom specified?

A. No. An inch and three-quarters is the ordinary heavy door in this country, and this is a two-inch door."

Direct Examination (Continued).

(By Mr. FLICK.)

I went out to the factory and warehouse after lunch and looked over the material again and there were 537 door stiles veneered and 356 stiles with the cores made up but not veneered, and in the pile I found the veneers cut for the bottom rails and top rails (S. F., p. 700). The panels are all complete and ready for the doors and the material for the doors is all there (S. F., p. 701), and I would say that 60 per cent of the labor is still to be done



(Testimony of C. D. Lindstrom.)

on the doors themselves (S. F., p. 702). There is quite an amount of labor in the way of handling and other work done on the 18,000 feet of base board, etc., run through the dry kiln and ripped up for which no charge is made (S. F., p. 704). Considering the [556] character of this work if it could not be used in this particular building there would not be any salvage (S. F., p. 706). It would simply depend upon some future chance. The mahogany base (for which no charge is made) is good base but is no longer good for lumber because of the groovings that have been put in it.

Work in addition to the ordinary factory specifications for mill work has been performed on this material (S. F., p. 707). You could not make these doors for much less than \$34 or \$36 in quantities (S. F., p. 709).

(Mr. HOLT.)

The baseboards are not junk (S. F., p. 712). They are perfectly good stuff.

**Testimony of Elmer E. Davis, for Tacoma Millwork Supply Company.**

ELMER E. DAVIS, witness for Tacoma Millwork Supply Co.

Direct Examination.

(By Mr. FLICK.)

Mr. Simpson, Mr. Drury and Mr. Larson stated to me that there was \$400.00 cash on hand and \$600,000 ready that they had borrowed on the mortgage (S. F., p. 714). This conversation occurred about

(Testimony of Elmer E. Davis.)

February 28th when I first noticed this lien waiver clause and they then said it was a requirement placed there by the Insurance Company who had loaned the money on the \$600,000 mortgage (S. F., p. 715). They stated that all the contracts would be signed alike with this waiver in it, and that mine was practically the last contract to be signed and that the other contracts had already incorporated the waiver of lien in them (S. F., p. 716) and with these assurances I signed the contract (S. F., p. 716).

**Testimony of C. W. Lindstrom, for Tacoma Mill-work Supply Company (Recalled).**

C. W. LINDSTROM, recalled for Tacoma Mill-work Supply Co.

Direct Examination (Cont'd).

(By Mr. FLICK.)

Speaking of salvage, if a man was to go out on the [557] market and try to dispose of this material at the present time in its entirety he would have a hard time to get any money out of it at all, but if he could hold it a year he might realize by selling a little at a time, three or four thousand dollars, figuring on the base and some of the panels and other pieces of suitable material. In that case he would have to insure it and store it (S. F., p. 717), then these charges would have to be deducted. He would simply have to take a chance. The unit of prices is fair in all cases. The matter of the doors as I said, about forty per cent of the labor has

(Testimony of C. W. Lindstrom.)

been done on these but that the material for the doors is all there (S. F., p. 718). The actual cost of the material with overhead would be about \$18.20 (S. F., p. 718), and a charge of \$20 for the doors made by the Millwork Company in their present state of completion is very fair, it is practically actual cost (S. F. p. 719). The labor on such a door is certainly \$10 at actual cost and his operating expenses would be 20 per cent at least (S. F., p. 719), and the total cost of the door with panels in quantities would be \$33.20.

#### Cross-examination.

(By Mr. METZGER.)

I am familiar with the 18,000 lineal feet of mahogany base mould, that is a member of the base, it is simply ripped and is useful material and therefore they make no charge for it. This material cost at the time \$300.00 a thousand or 30¢ a foot, but they may have bought it for less. You must figure 3¢ a foot for waste and for 2" mold 6¢ a foot for material. It cost a cent and a half to two cents to run and smooth it, or about 8½¢ for that stuff; and after it is completed it would be worth about 8¢ a foot for the molding. For 7¾ mahogany base board you must have 9" lumber. We figure three-fourths for material and add one-fourth for waste and cutting. [558]

The material would cost about 27½ cents raw, filling and smoothing would be about 3¢ and adding the rabbeting and dressing down would be 1½¢ for an inch foot, and 1½¢ for smoothing or 3½¢ for

(Testimony of C. W. Lindstrom.)

molding and smoothing. Twenty-four cents for molding and smoothing and about 26 or 27 cents for material. Fifty cents a foot would be a reasonable charge. You must make a deduction for waste on this base mold (S. F., pp. 721, 722). We figured about  $6\frac{1}{2}\text{¢}$  of that for wastage, milling and smoothing or about 6¢ a foot on that mold, that is an inch foot. You waste about one-half of the mold ripping it. (S. F., p. 722.)

“Q. No, they are making no claim for mullion panel casing. What will that casing be worth per foot?

Mr. FLICK.—I do not see, when we are making no claim for that material, why he should go into it at that time. We are claiming, your Honor,—I just want to be corrected if I am wrong,—that the reasonable,—that is, we are claiming for the reasonable value of these items as they run down through these sheets, and we have specified no claims for various items, probably twenty items, making no claim for them whatsoever.

The COURT.—I suppose it is the purpose of counsel to show that you minimize all the materials you did not claim for. It would be some sort of an argument that you overcharged on the material that you did not claim for.

Mr. FLICK.—We are not claiming anything on these units that we say ‘No claim for.’

The COURT.—It does not seem to amount to a great deal, if counsel think they can develop some-

(Testimony of C. W. Lindstrom.)

thing out of it, I will give them a chance. Objection overruled.

A. I do not know what the mullion casings were, so that I could not say what they are worth.

Q. You do not know anything about what they are worth? A. No, I do not.

Mr. FLICK.—We would be glad to have Mr. Davis tell Mr. Lindstrom what they are, so that he can examine them. He did not look up anything for which there was no claim.

WITNESS.—These are not manufactured, so I have no chance to see about what they are. I have not seen them.”

(Mr. Davis, of the Tacoma Millwork Supply Co., explain these details of the mullion casings on the window frames.) [559]

C. W. LINDSTROM.—(Continuing.) Such casings would cost 35¢ lineal foot finished, of this 21¢ is for material. It is customary to figure 8 or 7 feet in this character of material and 10 feet for 9' 4" otherwise you would run short on cutting and wastage.

(Mr. Davis details the subjamb.) (S. F., p. 725.)

Mr. LINDSTROM.—(Continuing.) Those are worth 20¢ a foot, 12¢ for material and 8¢ for labor. The same overplus measurements would apply just given. The head subjambs are the same boards as the side subjambs. Fir subjambs, that lumber figured at that time about \$150 a thousand finished, board measure, 12" wide. Twelve to 15¢ a foot would be about right (S. F., p. 726) this would be



(Testimony of C. W. Lindstrom.)

for 12" side board, and it reduces it for a 4" sub-jamb to 4¢ or 5¢ a foot. Fir mullioned casing would run about 4¢ a foot; window stools about 7¢ or 8¢ a foot (S. F., p. 727). I examined the windows, that is the frame and sash both at the factory and at the warehouse (S. F., p. 727), they were all complete, all made up mold on them and everything complete. The sashes completed (S. F., p. 728). It seemed to me that a big portion of the casings were completed, that is ready to put together for the frames. I could not say how many were mitered and glued up, I did not count them. There is a whole warehouse full of this stuff right there (S. F., p. 728). Those in the rack were not mitered and glued up. (Witness indicated that a few were piled about "this size" that are not done.) (S. F., p. 729.) Possibly 50 were in the rack. It would take a man about an hour's work at least cutting the mitre, keying the joints there, glueing and smoothing up the joints, that is to make a casing and getting it into a frame like that one that is in the courtroom, possibly it would take longer. I would hardly dare to figure on an hour's [560] time to cover it, and it is worth \$1.00 net per hour, plus the overhead and insurance, or about \$1.50. An average man could not complete 8 frames a day. The same situation applies to mitering up, glueing and smoothing off the sides of the window casings. (Mr. Davis describes the work done on 405 window casings which are too large when assembled to go into the building.) (S. F., p. 731.)

(Testimony of C. W. Lindstrom.)

(That is the extra work which the erector would do.)

This is about the same work just described but it takes a little longer. You must fit them together, put your key in, make them apart again, then at the building they must be put together again and glued. The glueing and the keying would have to be done on the job.

There is an item of fitting 1848 pieces of sash into frames and preparing for hardware, that is erection work. I saw it. That would ordinarily be done in the building. I would not be prepared to say what that would be worth. A man would have to keep tab on the time it took to do it, and I am not prepared to say accurately what time it would take to do that portion of the work.

Q. As to these doors, your calculation as to the labor cost of completing them in the state in which they are now, would average about \$12?

A. No, the entire cost of the labor on the door, the labor could be made up for \$10, for actual cost of labor; adding 20 per cent for operating expenses would be \$12 as the cost of the labor, the entire cost of the labor in the door.

Q. Twelve dollars?      A. Yes.

Mr. FLICK.—If the total door costs about \$32 and Mr. Davis charged \$20 his proportionate cost is about right, isn't it?      A. Yes."

**Testimony of E. C. Cornell, for Tacoma Millwork  
Supply Company.**

E. C. CORNELL, witness for Tacoma Millwork  
Supply Co.

Direct Examination. [561]

(By Mr. FLICK.)

I have been a general contractor for 32 years (S. F., p. 733). I have seen the material at the warehouse on the avenue and at the warehouse at the factory, that Mr. Lindstrom has described. I figure that there might possibly be a thousand dollars of salvage in it, if we dispose of all of that material, and I compute this on the same basis that Mr. Lindstrom did. If we were going to hold it a year (S. F., p. 733) a man would have to find his market and he would have to persuade someone to design a building to fit the material. It is an eastern design and different from that of the western architects are specifying or detailing, and one would have to make an attractive price. You would have to persuade someone to use the material (S. F., p. 734).

We are to-day getting about 30 per cent more efficiency in labor than two years ago and are paying \$1.00 a day less (S. F., p. 736).

**Testimony of J. E. Bonnell, for Tacoma Millwork Supply Company.**

J. E. BONNELL, witness for Tacoma Millwork Supply Co.

Direct Examination.

(By Mr. FLICK.)

I am a contractor in the city of Tacoma and have been such for 30 years, and am familiar with interior finishing, I have seen the interior finish in storage, in issue in this case, and looked it over with Mr. Lindstrom and Mr. Cornell (S. F., p. 766). The panels of the doors are good and the base could be used, but the rest of the material is a pretty hard thing to put a price on (S. F., p. 767) for salvage, I would not give anything for it. It would be pretty difficult to sell it in the open market. I have been building for thirty years and have had occasion to use mahogany in only two buildings since that time. If a man had a place to store this material he might roughly estimate [562] \$3,000 or \$4,000 for it, then one would have to consider insurance and storage (S. F., p. 767). This job is very peculiar it is old style base and something that has not been done for years (S. F., p. 768).

**Testimony of R. T. Davis, for Tacoma Millwork Supply Company (Recalled).**

R. T. DAVIS, recalled, continued his testimony.

Direct Examination.

(By Mr. FLICK.)

We have been paying \$100 for storing about half

(Testimony of R. T. Davis.)

of this material per month and now we are getting it at \$75 a month and in fact paid for one floor about \$150 a month for a short time. Insurance runs about \$160 a year. (S. F., p. 773.)

**Testimony of George Davis, for Tacoma Millwork Supply Company (Recalled).**

GEORGE DAVIS, recalled by Tacoma Millwork Supply Co.

Direct Examination.

(By Mr. PAUL.)

Mr. Drury, in the conversation with him, told me that the \$600,000 represented a first mortgage on the property, and that the building company were the full owners of the property with nothing against it except this \$600,000 mortgage (S. F., p. 774).

The Court thereupon, at the conclusion of the case, rendered its memorandum opinion which is a part of the transcript on appeal. Thereupon this appellant gave notice of appeal in open court on May 3d, 1922.

Exhibits No. 191 and 192 were introduced during the examination of Miss Carlson, the first being letters of the Far West Clay Co., and the second letters of the Washington Brick, Lime & Sewer Pipe Co. Originals being hereto attached at close of this evidence. [563]



**Exhibit "F."****EXHIBIT "A."**

"THIS AGREEMENT, made this 5th day of February, 1920, by and between McClintic-Marshall Company of Pittsburgh, a Pennsylvania Corporation, hereinafter termed the CONTRACTOR, and Scandinavian-American Building Co., Tacoma, Washington, hereinafter named the PURCHASER, WITNESSETH, That in consideration of the mutual promises hereinafter stated, the parties hereto mutually agree as follows:

ARTICLE I. The contractor agrees to furnish and deliver, f. o. b. cars, their works present rate of freight allowed to Tacoma, Washington, exclusive of spotting, switching or other delivery charges, the structural steelwork, for the Scandinavian-American Bank Building located at Pacific Ave. and Eleven Street, Tacoma, Washington, in accordance with plans, Job No. 148 Sheets 1 to 4 inclusive and 8 to 10 and specifications covering Steel and Iron Work as prepared by Frederick Webber, Architect and Engineer, 403 Morris Bldg., Phila., Pa.

ARTICLE II. The Contractor agrees to begin shipment of the material within 60 days and to make complete shipment of the material within 120 days after the date of this Agreement, provided all the required data are furnished by the Purchaser to the Contractor within five (5) days after the date of this Agreement, and provided further, that the Contractor is not obstructed or delayed by any act, neglect or default of the Purchaser or their em-

ployees or agents, or by the Rolling Mills, Transportation, Strikes, Fire, Storms, Floods or other causes beyond the reasonable control of the Contractor. [564]

The Purchaser agrees to accept delivery of material when forwarded from Contractor's works, or, upon transfer of title, to pay for said material as though it had been delivered under the terms of the contract and to reimburse the Contractor for any expense it may incur in storing, caring for and re-handling the same.

ARTICLE III. That Purchaser agrees to furnish the Contractor with complete and final date for this work within five (5) days after the date of this agreement.

ARTICLE IV. Upon written request, the Contractor shall provide, at such times and places as will least interfere with its operations, facilities for the inspection of the work by the Purchaser, but the Contractor assumes no liability for injuries sustained by the Inspector, except injuries due to the gross negligence or willful default of the Contractor. Any material condemned by the Inspector which is not in accordance with the plans and specifications and is, on this account, unsuitable for the purpose intended, will be replaced by other and suitable material. Any rejection of plain material by the Inspector must be made before shipment from the Rolling Mill and any rejection of finished material on account of workmanship must be made before shipment from the Contractor's works.

ARTICLE V. In consideration of the faithful execution of the work above specified to be performed by the Contractor, the Purchaser hereby promises and agrees to pay to the Contractor the sum of five and nine tenths cents (5.9¢) per pound f. o. b. their works present rate of freight allowed to Tacoma, Washington, exclusive of spotting, switching or other delivery charges. If freight rates or taxes are increased before shipment is made, the Purchaser is to reimburse the Contractor for such extra freight and tax paid, in funds current at par in Pittsburgh; or New York City as follows: 85% of the full value of each shipment on the 20th day of the month following date of such shipment, remaining 15% thirty days thereafter. [565]

ARTICLE VI. Failure by the Purchaser to make payments at the times stated in this Agreement shall give the Contractor the right to suspend work until payment is made, or, at its option, after thirty (30) days' notice in writing, should the Purchaser continue in default, to terminate this contract and recover the price of all work done and materials provided and all damages sustained; and such failure to make payments at the times stated shall be a bar to any claim by the Purchaser against the Contractor for delay in completion of the work.

ARTICLE VII. No alteration shall be made in the work except upon written order of the Purchaser or his authorized representative, and the amount to be paid by the Purchaser or allowed by the Contractor on account of such alterations is to be agreed upon within ten days from date of same.

Unless otherwise agreed upon, additional work will be charged by the Contractor at exact cost to the Contractor plus Fifteen (15%) per cent, for profit.

ARTICLE VIII. Should the Contractor at any time refuse or neglect to carry on the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, the Purchaser, if not in default, shall be at liberty, after ten days' written notice to the Contractor, to provide any such labor or materials, and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this contract.

ARTICLE IX. If at any time there shall be found established evidence of any lien or claim for which the Purchaser might be held liable arising out of any work or materials furnished by the Contractor, the Purchaser, upon presenting such evidence to the Contractor, may retain out of any payment due or to become due an amount sufficient to indemnify them against such lien or claim until it has been settled or discharged or until the Contractor furnishes to the Purchaser an indemnity bond equal in amount to said lien or claim. [566]

ARTICLE X. It is also further agreed between the parties hereto that any dispute whatsoever growing out of this Agreement shall be referred to three Arbitrators, one to be appointed by each of the parties to this Agreement and the third by the two thus chosen. Each Arbitrator shall be qualified by experience in Engineering and Contracting to perform the duties assigned to him. The decision of

any two of these shall be final and binding, and each of the parties to this Agreement shall pay one-half the expense of such reference.

IN WITNESS WHEREOF the parties hereto have executed this Agreement at Pittsburgh, Pa., the day and year first above written. Executed in duplicate.

SCANDINAVIAN - AMERICAN BLDG.  
CO.

By CHARLES DRURY,  
Prest.

J. V. SHELDON,  
Secy.

McCLINTIC-MARSHALL COMPANY,  
C. D. MARSHALL,  
President.

Witness: G. L. TAYLOR. [567]

**Exhibit No. 68.**

SAVAGE-SCOFIELD COMPANY.

February 19th, 1920.

Mr. Frederick Webber,  
c/o Tacoma Hotel,  
Tacoma, Washington.

Dear Sir:

We are pleased to quote you prices f. o. b. job Scandinavian-American Bank Building, corner 11th and Pacific Avenue as follows:

Coarse gravel 2½" down—\$1.55 per cubic yard.

Coarse sand—\$1.55 per cubic yard.

Fine gravel 1½ inch mesh down—\$1.70 per cubic yard.



Fine sand for mortar work—\$1.55 per cubic yard.

Cement—\$3.78 per barrel f. o. b. team track, Tacoma or \$4.03 delivered by our trucks, f. o. b. building.

The above prices on cement include the sacks, which if you will return to factory yourselves we will render you the factory credit slip which will be 25¢ per sack for all good sacks. Or if you wish to return the sacks to us we will allow you 20¢ each for all good ones returned.

It is understood that sacks that are allowed to get wet are worthless as the factory absolutely refuses to take them back.

An additional allowance of 5¢ per barrel will be allowed on cement if invoice is paid within ten days of its date.

We agree to give you frank service and can take care of your requirements as needed as we have a large fleet of White trucks (the best that money can buy) and besides we are not engaged in any transfer business or drayage problem but maintain our delivery end for the prompt and efficient delivery of our own goods, thereby giving service and satisfaction to our customers.

We will give you a price on lime just as soon as we receive exact figures from the manufacturers.

Respectfully, yours,

SAVAGE-SCOFIELD COMPANY,

By H. O. SCOFIELD, (Signed)

Sect. and Treas. [568]

**Exhibit No. 136.****EXHIBIT "A."****CONTRACT.**

THIS AGREEMENT, made this 28th day of February, A. D. 1920, by and between Scandinavian-American Building Company, a corporation, hereinafter called the "Owner," party of the first part, and Washington Brick, Lime & Sewer Pipe Company, a corporation organized and existing under the laws of the State of Washington, hereinafter called the "Contractor," party of the second part.

**WITNESSETH:**

WHEREAS, the said Scandinavian-American Building Company, Owner, is about to begin the erection of a sixteen-story building on the property situated in Pierce County, Washington, described as follows: Lots Ten (10), Eleven (11) and Twelve (12) in Block One Thousand Three (1003), as shown and designated upon certain plat entitled "Map of New Tacoma, W. T." of record in the office of the Auditor of Pierce County, Washington, according to plans and specifications prepared by Frederick Webber, of Philadelphia, Penn., architect, and

WHEREAS, The said Washington Brick, Lime & Sewer Pipe Company is desirous of entering into a contract with the said Scandinavian-American Building Company, Owner, to furnish all the terra cotta above the dentil course over the back on two sides, being 11th and Pacific Avenue, the alley side to run to the granite base; the rear to run down to the wall of the adjoining building, according to

estimate of February 19th, 1920, attached hereto; under and subject to all terms, limitations and conditions contained in the plans and specifications hereinbefore referred to.

**NOW THIS AGREEMENT WITNESSETH:**

ART. I. That in consideration of the agreements herein contained, the Owner agrees to pay to the Contractor, the sum of One Hundred Nine Thousand Dollars (\$109,000.00) in installments as hereinafter stated. Said payments, however, in no way lessening the total and final responsibility of the Contractor. No payment shall be construed or considered as an acceptance of any defective work or improper material.

Although it is distinctly understood and agreed by and between the parties hereto that this contract is a whole contract, and not severable or divisible, yet for the convenience of the Contractor, it is stipulated that the payments shall be made as follows:

75% monthly, to be paid in cash, of the estimated value of material delivered, and the balance of 25% to be paid within thirty (30) to sixty (60) days from the completion of this contract.

ART. II. The said Contractor hereby covenants, promises and agrees to do all of the aforesaid work to be furnished and finished agreeably to the satisfaction, approval and acceptance of the Architect of said building and to the satisfaction, approval and acceptance of the said Owner, according to the true intent and meaning of the drawings, plans

EXHIBIT "A" (Continued). Page 2.

[569] and specifications made by said Architect,

which said plans, drawings and specifications are to be considered as part and parcel of this agreement, as fully as if they were at length herein set forth and the said Contractor is to include and do all necessary work under this contract, not particularly specified, but required to be furnished and done in order to fully complete and fulfill his contract to the satisfaction of the said Architect and Owner aforesaid.

ART. III. The Contractor hereby agrees that time shall be considered the very essence of this contract and to complete all the obligations herein assumed, and to enter into the spirit of co-operation under which all the contractors are working. And the said Contractor further covenants and agrees to perform the work promptly, without notice on the part of anyone, so as to complete the building at the earliest possible moment.

ART. IV. The Contractor further covenants and agrees to observe carefully the progress of the work up to the entire building, without notice from anyone, and to procure drawings at least two weeks prior to executing the work, and to perform his portion of the work upon said building at the earliest proper time for such work, and to be responsible for all loss occasioned directly and indirectly by any lack of knowledge upon his part, as to the proper time to perform his work.

ART. V. The said Contractor shall complete the several portions and the whole of the work comprehended under this agreement by and at the time or times hereinafter stated, viz.:

Delivery of the aforementioned material to commence within four (4) months from the date of this contract, and to be completed within six (6) months.

Should the Contractor be delayed in delivering his material, by the Owner, certificates are to be given for payment for the material completed at the factory.

ART. VI½. The Purchaser shall furnish to the Manufacturer such further drawings or explanations as either party may consider necessary to detail and illustrate the work to be made, and the Manufacturer shall conform thereto as part of this contract so far as the same may be consistent with the original drawings and specifications hereinbefore referred to and with the technical possibilities of the material.

ART VI. Should the Contractor be delayed in the progress of the work under this contract by strike, or common carrier, or casualty wholly beyond the control of the Contractor, then the time herein designated for the completion of said work shall be extended for a period equivalent to the time lost, but no such allowance shall be made unless a claim therefor is presented in writing by the Contractor within twenty-four hours of the occurrence of such delay. [570]

Page 3.

ART. VII. And in case of default in any part of the said work within the times and periods above specified, the contractor hereby promises and agrees to pay the Owner, and the Owner may deduct from any amount coming to the Contractor the sum



of Fifty (\$50.00) Dollars for each and every day's delay until the completion of the work, not in the nature of a penalty, but in the nature of liquidated damages for the delay caused to the Owner in the completion of the work.

ART. VIII. Any imperfect workmanship or other faults which may appear within one year after the completion of said work, and in the judgment of said Architect arising out of improper materials or workmanship, shall, upon the direction of said Architect, be amended and made good by, and at the expense of, said Contractor, and in case of default so to do, the Owner may recover from said Contractor the cost of making good the work.

ART. IX. The Contractor hereby agrees to remove the dirt and rubbish accumulating on the premises, caused by the construction of his work, at such time or times as he may be instructed by the Owner or his representatives, and if not removed promptly by the Contractor, the Owner is hereby authorized to remove the same at the expense of the said Contractor, and to deduct the cost thereof from any balance that may be due and owing him.

ART. X. And should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or materials of the proper quality or fail in any respect to prosecute the work with promptness and diligence or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being cer-

tified by the Architect or the Owner, the latter shall be at liberty after two days' written notice to the Contractor to provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this contract; and if the Architect or the Owner shall certify that such refusal, neglect or failure is sufficient ground for such action, the Owner shall also be at liberty to terminate the employment of the Contractor for the said work and to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all materials, tools and appliances thereon and to employ any other person or persons to finish the work and provide the materials therefor; and in case of such discontinuance of the employment of the Contractor, the latter shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the Owner in finishing the work said excess shall be paid by the Owner to the Contractor; but if said expenses shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expenses incurred by the Owner as herein provided, either for furnishing the materials or for finishing the work and any damage incurred through such default shall be itemized and certified by the Owner, which itemized statement shall be conclusive upon the Contractor. [571]

ART. XI. And the Owner reserves the right that if there be any omission or neglect on the part of the said Contractor of the requirements of this agreement and the drawings, plans and specifications, the said Owner may, at its discretion, declare this contract, or any portion thereof, forfeited; which declaration and forfeiture shall exonerate, free, and discharge the said Owner from any and all obligations and liabilities arising under this contract, the same as if this agreement had never been made; and any amount due the Contractor by reason of work done or materials furnished prior to the forfeiture of this contract, shall be retained by the said Owner until the full completion and acceptance of the building upon which said work has been done or said materials furnished, at which time the said Owner, after deducting all costs and expenses occasioned by the default of the said Contractor, shall pay or cause to be paid to him the balance with a statement of all said costs and expenses.

ART. XII. And the contractor further covenants, promises and agrees that he will make no charge for any extra work performed or materials furnished in and about his contract, and he hereby expressly waives all right to any such compensation, unless he shall first receive an order in writing for the same from the Owner.

ART. XIII. And the Contractor hereby assumes entire responsibility and liability in and for any damage to persons or property during the

fulfillment of this contract, caused directly or indirectly by the Contractor, his agents or employees, and the Contractor agrees at his own expense to carry sufficient liability and workmen's compensation insurance and to enter in and defend the Owner against, and save it harmless from loss or annoyance by reason of suits or claims of any kind on account of such alleged or actual damages; or on account of alleged or actual infringements of patents in regard to any method, device or apparatus, or any part thereof, put in, under, or in connection with this contract, or used in fulfilling the same.

The Contractor hereby further agrees not to assign or sublet in any manner whatsoever, any part or portion of this contract, without the written consent of the Owner, upon the express penalty of forfeiture of the entire contract, in the discretion of the Owner.

ART. XV. And the Contractor shall at all times, when required by the Owner, before receiving any moneys under this contract, produce satisfactory vouchers and receipts from all employees and materialmen for work done and materials furnished in and about the erection and completion of the building covered by this contract.

ART. XVI. And any and all work that may be cut out and omitted from this contract, during the progress of the work, shall be allowed by the Contractor at the regular contract price, and shall be adjusted and agreed upon by said parties before the final settlement of their accounts. [572]

ART. XVII. The Owner shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said work, or any part thereof, or to any of the materials or other things done, furnished and supplied by the Contractor, used and employed in finishing and completing the same.

ART. XVIII. It is hereby further mutually covenanted, promised and agreed, by and between the said parties, that in the event of any dispute or disagreement hereafter arising between them as to the character, style or portion of the work on said buildings to be done, or materials to be furnished under this contract, or the plans and specifications hereinbefore referred to, or any other matter in connection therewith, the same shall be referred to three arbitrators, one to be chosen by each of the parties hereto, and the third by the two arbitrators so selected, whose decision, or that of a majority of them in the matter, shall be final and binding upon them.

ART. XIX. The Contractor shall, upon request from the Owner, furnish forthwith a bond or bonds in form and substance and with surety satisfactory to the Owner, in the sum of Fifty-four Thousand (\$54,000.00) Dollars conditioned for the true and faithful performance of this contract on the part of the Contractor. The Bond, however, to be paid for by Owner.

ART. XX. All negotiations and agreements, oral or written, prior to this agreement, are merged



herein and there are no understandings or agreements, verbal, written or otherwise, between the said parties except as herein set forth. This agreement cannot be changed, altered or modified in any respect except by the mutual consent of the parties endorsed hereon in writing and duly executed.

The Contractor has read and fully understands this agreement and the said Contractor hereby certifies that before the execution of this agreement he examined all the plans and specifications prepared in connection with the contract.

And it is further agreed that the covenants, promises and agreements herein contained shall be binding upon and final upon the heirs, executors, administrators and successors of the parties hereto.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of  
SCANDINAVIAN-AMERICAN BUILD-  
ING COMPANY,

By CHARLES DRURY,  
Its President.

J. SHELDON,  
Its Secretary.

WASHINGTON BRICK, LIME & SEWER  
PIPE CO.,

Contractor.

By V. E. PIOLLET,  
Vice-President.

CHARLES P. LUND,  
Sec'y. [573]

**Exhibit No. 151.**

THIS AGREEMENT made this 28th day of February, A. D. 1920, by and between Scandinavian-American Building Company, a corporation, hereinafter called the owner, party of the first part, and Tacoma Millwork Supply Company, hereinafter called the contractor, party of the second part.

**WITNESSETH:**

WHEREAS, the said Scandinavian-American Building Company, Owner, is about to begin the erection of a 16-story building on the property situated in Pierce County, Washington, described as follows: Lots Ten (10), Eleven (11), and Twelve (12) in Block One Thousand Three (1003), as shown and designated on a certain plat entitled "Map of New Tacoma, W. T." of record in the office of the Auditor of Pierce County, Washington, according to plans and specifications prepared by Frederick Webber, of Philadelphia, Penn., architect, and

WHEREAS, the said Tacoma Millwork Supply Co. of Tacoma, Wash., is desirous of entering into a contract with the said Scandinavian-American Building Company, Owner, to furnish all of the interior millwork with the exception of Bank Quarters; also all of the interior window and door frames, for the sum of Sixty-five Thousand (\$65,000) Dollars.

All plaster grounds to be furnished at a price of \$8.00 per thousand lineal feet on  $\frac{3}{4} \times 1\frac{5}{8}$  grounds, according to estimates furnished by party

of the second part, dated Feb. 17th and 18th, 1920, under and subject to all terms, limitations and conditions contained in the plans and specifications hereinabove referred to.

NOW THIS AGREEMENT WITNESSETH,

ART. I. That in consideration of the agreements herein contained, the Owner agrees to pay to the Contractor the sum of Sixty-five Thousand (\$65,000) Dollars in installments as hereinafter stated. Said payments, however, in no way lessening the total and final [574] responsibility of the Contractor. No payment shall be construed or considered as an acceptance of defective work or improper material.

Although it is definitely understood and agreed by and between the parties hereto that this contract is a whole contract, and not severable or divisible, yet for the convenience of the contractor, it is stipulated that payments shall be made as follows:

75% monthly to be paid in cash upon the 15th of each month, provided estimates are furnished to the Architect on or before the first of each month, of the estimated value of the work delivered and erected, and the balance of 25% to be paid within 30 to 60 days from the completion and acceptance of the millwork material furnished and covered by this contract.

ART. II. The said Contractor hereby covenants, promises and agrees to do all of the aforesaid work to be furnished and finished agreeable to the satisfaction, approval and acceptance of the Architect of said building and to the satisfaction, approval

and acceptance of the said Owner, according to the true intent and meaning of the drawings, plans and specifications made by said Architect, which said plans, drawings and specifications are to be considered as part and parcel of this agreement, as fully as if they were at length herein set forth, and the said Contractor is to include and do all necessary work under his contract, not particularly specified, but required to be furnished and done in order to fully complete and fulfill his contract to the satisfaction of the said Architect and Owner aforesaid.

ART. III. The Contractor hereby agrees that time shall be considered the very essence of this contract and to complete all the obligations herein assumed, and to enter into the spirit of co-operation under which all the contractors are working. And the said contractor further covenants and agrees to perform the work promptly, without notice on the part of anyone, so as to complete the building at the [575] earliest possible moment.

ART. IV. The Contractor further covenants and agrees to observe carefully the progress of the work upon the entire building, without notice from anyone and to procure drawings at least two weeks prior to executing the work, and to perform his portion of the work upon said building at the earliest possible time for such work, and to be responsible for all loss occasioned directly and indirectly by any lack of knowledge upon his part, as to the proper time to perform his work.

ART. V. The said Contractor shall complete the several portions and the whole of his work, comprehended under this agreement by and at the time or times hereinafter stated, viz.: All the work aforementioned to be delivered and put in place so that the whole can be completed in ten (10) months from date of this contract, and to be delivered as fast as the building will permit.

ART. VI. Should the contractor be delayed in the progress of the work under this contract by strikes, or common carrier, or casualty wholly beyond the control of the Contractor, then the time herein designated for the completion of said work, shall be extended for a period equivalent to the time lost, but no such allowance shall be made unless a claim therefor is presented in writing by the Contractor within twenty-four hours of the occurrence of such delay.

ART. VII. And in case of default in any part of the said work within the times and periods above specified, the Contractor hereby promises and agrees to pay the owner, and the owner may deduct from any amount coming to the Contractor the sum of Fifty (\$50) Dollars for each and every day's delay until the completion of the work, not in the nature of a penalty, but in the nature of liquidated damages for the delay caused to the owner in the completion of the work. [576]

ART. VIII. Any *un*perfect workmanship or other faults which may appear within one year after the completion of said work, and in the judgment of said Architect arising out of improper



materials or workmanship, shall, upon the direction of said Architect, be amended and made good by, and at the expense of, said Contractor, and in case of default so to do, the Owner may recover from said Contractor the cost of making good the work.

ART. IX. The Contractor hereby agrees to remove the dirt and rubbish accumulating on the premises caused by the construction of his work, at such time or times as he may be instructed by the Owner or his representatives, and if not removed promptly by the Contractor, the Owner is hereby authorized to remove the same at the expense of the said contractor, and to deduct the cost thereof from any balance that may be due and owing him.

ART. X. And should the Contractor at any time refuse or neglect to supply sufficient of properly skilled workmen or materials of the proper quality or fail in any respect to prosecute the work with promptness and diligence or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the Architect or the Owner, the latter shall be at liberty after two day's written notice to the Contractor to provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this contract; and if the Architect or Owner shall certify that such refusal, neglect or failure is sufficient grounds for such action, the Owner shall also be at liberty to terminate the employment of the Contractor for the said work and

to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all materials, tools and appliances thereon and to employ any other person or persons to finish the work and provide the materials therefor, and in case of such discontinuance of the [577] employment of the Contractor, the latter shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished at which time if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the Owner in finishing the work said excess shall be paid by the Owner to the Contractor; but if said expenses shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expenses incurred by the Owner as herein provided either for furnishing the materials or for finishing the work and any damage incurred through such default shall be itemized and certified by the Owner, which itemized statement shall be conclusive upon the Contractor.

ART. XI. And the Owner reserves the right, that if there be any omission or neglect on the part of the said Contractor or the requirements of this agreement and the drawings, plans and specifications, the said Owner may, at its discretion, declare this contract, or any portion thereof, forfeited; which said declaration and forfeiture shall exonerate, free and discharge the said Owner from any and all obligations and liabilities arising under this contract, the same as if this agreement had never

been made; and any amount due the Contractor by reason of work done or materials furnished prior to the forfeiture of this contract, shall be retained by the said Owner until the full completion and acceptance of the building upon which the said work has been done or the said materials furnished, at which time the said Owner, after deducting all costs and expenses occasioned by the default of the said Contractor, shall pay or cause to be paid to him the balance with a statement of all said costs and expenses.

ART. XII. And the Contractor further covenants, promises and agrees *the* he will make no charge for any extra work performed or materials in and about his contract, and he hereby expressly waives all right [578] to any such compensation, unless he shall first receive an order in writing for the same from the Owner.

ART. XIII. And the Contractor hereby assumes entire responsibility and liability in and for any damage to persons or property during the fulfillment of this contract, caused directly or indirectly by the Contractor, his agents or employees, and the Contractor agrees at his own expense to carry sufficient liability and workmen's compensation insurance and to enter in and defend the Owner against, and save it harmless from loss or annoyance by reason of suits or claims of any kind on account of such alleged or actual damages, or on account of alleged or actual infringements of patents in regard to any method, device or apparatus, or any part

thereof, put in, under or in connection with this contract, or used in fulfilling the same.

The Contractor hereby further agrees not to assign or sublet in any manner whatsoever, any part or portion of this contract, without the written consent of the Owner, upon the express penalty of forfeiture of the entire contract, in the discretion of the Owner.

ART. XIV. And the contractor further agrees for himself, his heirs, executors, administrators and assigns to waive any and all right to any mechanic's lien or claim against said premises, and hereby expressly agrees not to file any claim or lien whatsoever against the premises involved in this contract.

ART. XV. And the Contractor shall at all times when required by the Owner, before receiving any moneys under this contract, produce satisfactory vouchers and receipts from all employees and materialmen for work done and materials furnished in and about the erection and completion of the building covered by this contract.

ART. XVI. And any and all work that may be cut out and omitted from this contract, during the progress of the work, shall be allowed by the Contractor at the regular contract price, and shall be adjusted [579] and agreed upon by said parties before the final settlement of their accounts.

ART. XVII. The Owner shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said work, or any part thereof, or to any of the materials or

other things done, furnished and supplied by the Contractor, used and employed in finishing and completing the same.

ART. XVIII. It is hereby mutually covenanted, promised and agreed, by and between the said parties that in the event of any dispute or disagreement hereafter arising between them as to the character, style or portion of the work on said buildings to be done, or materials to be furnished under this contract, or the plans and specifications hereinabove referred to, or any other matter in connection herewith, the same shall be referred to three arbitrators, one to be chosen by each of the parties hereto, and the third by the two arbitrators so selected, whose decision, or that of a majority of them in the matter, shall be final and binding upon them.

ART. XIX. The Contractor shall, upon request from the Owner, furnish forthwith a bond or bonds in form and substance and with surety satisfactory to the Owner, in the sum of Thirty-two Thousand (32,000) Dollars, conditioned for the true and faithful performance of this contract on the part of the Contractor.

ART. XX. All negotiations and agreements, oral or written, prior to this agreement, are merged herein and there are no understandings or agreements, verbal, written or otherwise, between the said parties except as herein set forth. This agreement cannot be changed, altered or modified in any respect except by the mutual consent of the parties endorsed hereon in writing and duly executed.



The Contractor has read and fully understands this agreement and the said Contractor hereby certifies that before the execution of this agreement he examined all the plans and specifications prepared [580] in connection with the contract.

And it is further agreed that the covenants, promises and agreements herein contained shall be binding and final upon the heirs, executors, administrators and successors of the parties hereto.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of  
SCANDINAVIAN-AMERICAN BUILD-  
ING CO.

By CHARLES DRURY,  
Its President.

J. SHELDON,  
Its Secretary.

TACOMA MILLWORK SUPPLY CO.

By R. T. DAVIS, Jr.  
G. L. DAVIS,  
Contractor. [581]

EXHIBIT No. 151.

February 17, 1920.

Mr. Frederick Webber, Archt.  
Tacoma, Wash.

Dear Sir:

Re: 16 Story Scandinavian-American Bank Bldg.,  
Tacoma.

Confirming our verbal conversation of this morning, we will agree to furnish you with all of the

millwork for the above building (with the exception of Bank quarters) and as per your plans and specifications, and the following understanding, for the sum of Sixty-five Thousand Dollars (\$65,000.00) net cash.

It is understood by the above general term of "Millwork" that we furnish no flooring, glass or hardware, or metal covered work.

It is also understood that the material for the exterior window frames and sash shall be of V. G. Fir. The interior trim throughout to be of Philippine Mahogany, with the doors veneered with the harder species on the stiles and rails, with Honduras Mahogany panels.

Owing to the great quantity of this work and our limited storage facilities, it will be necessary that we ask you to provide dry storage space, and accept delivery as fast as manufactured.

We also suggest that the painter's priming be done by you at our factory, before delivery, as without this precaution we could not guarantee the work.

As to the terms of payment, we would expect 75% of the estimated value of the work delivered, or accepted for delivery, to be paid us on or before the 10th of the current month, for all the previous month's work, and the balance of 25% to be retained to be paid within 30 or 60 days of completion and acceptance of the entire contract.

Respectfully submitted,

TACOMA MILLWORK SUPPLY CO.

By FREDERICK WEBBER (Signed),

Arch. [582]

EXHIBIT No. 151.

Tacoma, Wash., February 17th, 1920.

Mr. Frederick Webber, Archt.

Tacoma, Wash.

Dear Sir:

Re: 16 Story Scandinavian-American Bank Bldg.

Confirming our verbal conversation of this morning, we will agree to furnish you with all of the "Millwork" for the above building (with the exception of Bank Quarters) and as per your plans and specifications, and the following understanding for the sum of Sixty-five Thousand Dollars (\$65,000.00) net cash.

It is understood by the above general term "Millwork" that we furnish no flooring, glass, or hardware, or metal covered work.

It is also understood that the material for the exterior window frames and sash shall be of V. G. Fir. The interior trim throughout to be of Philippine Mahogany, with the doors veneered with the harder species on stiles and rails, with panels of Honduras Mahogany.

It is our suggestion that the painter's priming be done by you at our factory, before delivery, as without this precaution we could not guarantee the work.

As to the terms of payment, we would expect 75% of the estimated value of the work delivered, or accepted for delivery, to be paid us on or before the 10th of the current month, for all of the previous month's work, and the balance of 25% retained to

be paid within 30 to 60 days of completion and acceptance of the entire contract. Bond to be furnished by Owner.

Respectfully submitted,

TACOMA MILLWORK SUPPLY CO.

By R. T. DAVIS, Jr. (Signed),

Mgr. [583]

**Exhibit No. 152.**

Being a contract similar to Exhibit 151, between the Scandinavian-American Building Company as party of the first part and Tacoma Millwork Supply Company as party of the second part and dated February 28th, 1920, with the following changes:

WHEREAS, The said Tacoma Millwork Supply Company is desirous of entering into a contract with the said Scandinavian-American Building Company, Owner, to furnish: All of the interior "Millwork" to be erected complete, according to the plans and specifications, for the sum of Thirty Thousand Dollars (\$30,000.00).

Also to furnish complete, the bucks, as per details, for the sum of Twelve Hundred Sixty-six Dollars (\$1266.00). All according to estimates furnished by the party of the second part, dated February 17th and 18th, 1920.

ART. I. That in consideration of the agreements herein contained the Owner agrees to pay to the Contractor the sum of Thirty-one Thousand Two Hundred Sixty-six Dollars (\$31,266.00) in installments as hereinafter stated. \* \* \*

Although it is distinctly understood and agreed by and between the parties hereto that this contract is a whole contract, and not severable or divisible, yet for the convenience of the Contractor, it is stipulated that payments shall be made as follows:

75% monthly to be paid in cash, upon the 15th of each month provided estimates are furnished to the Architect on or before the first of each month, of the estimated value of the work delivered and erected, and the balance of 25% to be paid within thirty to sixty days, from completion and acceptance of the work and material covered by this contract.

ART. V. The said Contractor shall complete the several portions and the whole of the work comprehended under this agreement by [584] and at the time or times hereinafter stated, viz.:

All of the work aforementioned to be delivered and erected so that the whole can be completed within ten (10) months from date of this contract, and to be erected as fast as the building will permit.

ART. XIX. The Contractor shall upon request from the Owner, furnish forthwith a bond or bonds in form and substance and with surety satisfactory to the owner, in the sum of Fifteen Thousand (\$15,000) Dollars, conditioned for the true and



faithful performance of this contract on the part  
of the Contractor. \* \* \*

SCANDINAVIAN-AMERICAN BUILD-  
ING CO.

By CHARLES DRURY,  
Its President.

J. SHELDON,  
Its Secretary.

TACOMA MILLWORK SUPPLY CO.

By R. T. DAVIS, Mgr.

G. L. DAVIS,  
Contractor. [585]

EXHIBIT No. 152.

Feb. 17th, 1920.

Mr. Frederick Webber, Archt.

Tacoma, Wash.

Dear Sir:

Re: 16 Story Scandinavian-American Bank Bldg.,  
Tacoma.

We will agree to furnish all of the labor and equipment necessary, to fully erect all of the "Mill-work" in the above building, as per your plans and specifications and in first-class shape, for the sum of Thirty Thousand Dollars (\$30,000.00). The fitting and placing of all hardware in the above "Mill-work" is included.

It is understood that the Owner will set the window frames, and furnish and set the door bucks and grounds.

The terms of payment to be as outlined in our  
"Millwork" bid of even date.

Respectfully submitted,  
TACOMA MILLWORK SUPPLY CO.  
Accepted by FREDERICK WEBBER,  
Archit.

Feb. 18, 1920.

Mr. Frederick Webber, Archit.  
Tacoma, Wash.

Dear Sir:

Re: 16 Story Scandinavian-American Bank Bldg ,

We will agree to furnish you *will* all the door  
bucks for the above building as per your plans, for  
the sum of \$1,266.00.

We are also pleased to make you a price of \$8.00  
per thousand lineal feet, on the  $\frac{3}{4} \times 1\frac{5}{8}$ " plaster  
grounds.

The door bucks will come plowed on the back, cut  
to proper lengths, and notched for header.

Respectfully submitted,  
TACOMA MILLWORK SUPPLY CO.  
Accepted by FREDERICK WEBBER,  
Archit. [586]

EXHIBIT No. 152.

Tacoma, Washington, Feb. 17, 1920.

Mr. Frederick Webber, Archit.  
Tacoma, Washington.

Dear Sir:

Re: 16 Story Scandinavian-American Bank Build-  
ing.

We will agree to furnish all of the labor and

equipment necessary to *full* erect all of the "Millwork" in the above building, as per your plans and specifications and in first-class shape, for the sum of Thirty Thousand Dollars (\$30,000.00). The fitting and placing of all hardware on the above "Millwork" is included.

It is understood that the "Owner" will set the window frames, and furnish and set the door-bucks and grounds.

The terms of payment to be as outlined in our "Millwork" bid of even date.

Bond to be paid by Owner.

Respectfully submitted,  
TACOMA MILLWORK SUPPLY CO.

By R. T. DAVIS, Jr. (Signed),  
Mgr.

Feb. 18, 1920.

Mr. Frederick Webber, Archt.

Tacoma, Washington.

Dear Sir:

Re: 16 Story Scandinavian-American Bank Building.

We will agree to furnish you all of the door bucks for the above building, as per your plans, for the sum of \$1266.00.

We are also pleased to make you a price of \$8.00 per lineal thousand feet, on the  $\frac{3}{4}$ x1 $\frac{5}{8}$ " plaster Grounds.

The door bucks will come plowed on the back, cut to proper lengths, and notched for header.

Respectfully submitted,  
TACOMA MILLWORK SUPPLY CO.

By R. T. DAVIS, Jr. (Signed),  
Mgr.

Bond to be paid by Owner. [587]

**Exhibit No. 153.**

Being a contract similar to Exhibit 151, between the Scandinavian-American Building Company as party of the first part and Tacoma Millwork Supply Company as party of the second part and dated February 28th, 1920, with the following changes:

WHEREAS, The said Tacoma Millwork Supply Co. is desirous of entering into a contract with the said Scandinavian-American Building Company, to furnish: The exterior window frames, together with the transom sash, for the first floor Banking Quarters, as per the plans and details, for the sum of Nineteen Hundred Fifty-seven Dollars (\$1957.00). Also to furnish labor of fitting the sash in the frames and putting on the interior mouldings, at an extra cost of \$171.00, all as per estimates of Feb. 25th, attached hereto.

ART. I. That in consideration of the agreements herein contained the Owner agrees to pay to the Contractor the sum of Two Thousand One Hundred Twenty-eight (\$2,128.00) Dollars in installments as hereinafter stated. Said payments, however, in no way lessening the total and final responsibility of the Contractor. No payment shall be construed or considered as an acceptance of any

defective work or improper material. Although it is distinctly understood and agreed by and between the parties hereto that this contract is a whole contract, and not severable or divisible, yet for the convenience of the Contractor, it is stipulated that payments shall be made as follows: 75% monthly to be paid in cash, upon the 15th of each month, provided estimates are furnished to the Architect, on or before the first of each month, of the estimated value of the work delivered and erected, and the balance of 25% to be paid within 30 to 60 days from completion and acceptance of the "Millwork" and erection covered by this contract. [588]

ART. V. The said Contractor shall complete the several portions and the whole of the work comprehended under this agreement by and at the time or times hereinafter stated, viz.:

All of the work aforementioned to be delivered and erected so that the whole can be completed within ten (10) months from the date of this contract, and to be delivered and erected as fast as the building will permit. \* \* \*

SCANDINAVIAN-AMERICAN BUILD-  
ING CO.

By CHARLES DRURY,  
Its President.

J. SHELDON,  
Its Secretary.

TACOMA MILLWORK SUPPLY CO.

By R. T. DAVIS, Jr.

G. L. DAVIS, (Signed),  
Contractor. [589]



EXHIBIT No. 153.

Tacoma, Washington, Feb. 25, 1920.

Mr. Frederick Webber, Archt.,  
Tacoma, Wash.

Dear Sir:

Re: 16 Story Scandinavian-Bank Bldg.

We will agree to furnish you with the exterior window frames, together with the transom sash, for the first Floor Banking Quarters, as per the plans and our details, for the sum of \$1957.00. This, of course, included no glass, no setting of frames or labor erecting. However, we estimate the labor of fitting the sash in the frames and putting on the interior mouldings at \$171.00, making a total of \$2128.00.

Respectfully yours,  
TACOMA MILLWORK SUPPLY CO.,  
By R. T. DAVIS, Jr.,  
Manager. [590]

**Exhibit No. 154.**

Sold to:

**SCANDINAVIAN-AMERICAN BANK BUILDING CO., CITY.**

All material MAHOGANY except where specified differently.

**EXHIBIT "A"-1.**

Key:

C. W.—Complete in Warehouse.

C. F.—Complete in Factory.

|       |       |      |          |                         |                                   |                                      |         |
|-------|-------|------|----------|-------------------------|-----------------------------------|--------------------------------------|---------|
| C. W. | 18000 | lft. | mahogany | base                    | $\frac{5}{8} \times 7\frac{3}{4}$ | @ .50.....                           | 9000.   |
| No.   | 18000 | "    | "        | base mold               | $\frac{3}{4} \times 2$            |                                      |         |
| Claim | 18000 | "    | "        | base shoe               | $\frac{3}{8} \times 1\frac{5}{8}$ |                                      |         |
| C. W. | 1000  | pcs. | 7-8      | door casing             | $13/16 \times 4\frac{1}{2}$       |                                      |         |
| C. W. | 800   | "    | 9-0      | "                       | " " "                             |                                      |         |
| C. W. | 900   | "    | 4-0      | "                       | " " "                             |                                      |         |
|       |       |      |          | 19600                   | Lin. ft.                          | @ .40.....                           | 7840.   |
| C. F. | 900   | pcs. | 7-3      | door stops              | $\frac{3}{4} \times 2$            |                                      |         |
| C. F. | 650   | "    | 3-4      | "                       | " " "                             |                                      |         |
| C. F. | 400   | "    | 1-5      | "                       | " " "                             |                                      |         |
|       |       |      |          | 10600                   | Lin. ft.                          | @ .20.....                           | 2120.   |
| C. F. | 400   | pcs. | 8-10     | Door Jambs              | $17/16 \times 5\frac{5}{8}$ net   |                                      |         |
| C. F. | 500   | "    | 7-4      | "                       | " " "                             |                                      |         |
| C. F. | 450   | "    | 3-4      | "                       | " " "                             |                                      |         |
|       |       |      |          | 9400                    | Lin. ft.                          | @ .50.....                           | 4700.   |
| C. F. | 200   | pcs. | 3-4      | mahogany                | trans. bar                        | $1\frac{13}{16} \times 5\frac{5}{8}$ |         |
|       |       |      |          | @                       | 2.25                              | ea.....                              | 450.    |
| C. F. | 322   | pcs. | 10-5     | window head casing      | $13/16 \times 4\frac{1}{2}$       |                                      |         |
| C. F. | 45    | "    | 9-10     | "                       | " " "                             |                                      |         |
| C. F. | 28    | "    | 9-0      | "                       | " " "                             |                                      |         |
| C. F. | 39    | "    | 5-0      | "                       | " " "                             |                                      |         |
|       |       |      |          | 4828                    | Lin. ft.                          | @ .40.....                           | 1931.20 |
| C. F. | 38    | pcs. | 9-10     | Window side casing      | $13/16 \times 4\frac{1}{2}$       |                                      |         |
| C. F. | 830   | "    | 7-4      | "                       | " " "                             |                                      |         |
|       |       |      |          | 7020                    | Lin. ft.                          | @ .40.....                           | 2808.   |
| No.   |       |      |          |                         |                                   |                                      |         |
| Claim | 19    | pcs. | 9-4      | mullion panelled casing | made up in shop                   |                                      |         |
| "     | 451   | "    | 7-0      | "                       | " " " " " "                       |                                      |         |

|       |     |      |       |                          |               |               |               |                   |
|-------|-----|------|-------|--------------------------|---------------|---------------|---------------|-------------------|
| No.   | 322 | pcs. | 10-6  | window stools            | 1             | $\frac{1}{8}$ |               |                   |
| Claim | 45  | "    | 9-11  | "                        | "             | "             | "             | "                 |
| No.   | 28  | "    | 9-0   | "                        | "             | "             | "             | "                 |
| Claim | 39  | "    | 5-2   | "                        | "             | "             | "             | "                 |
| C. W. | 322 | "    | 10-6  | window apron             | $\frac{3}{4}$ | x             | 3             | $\frac{1}{2}$     |
| C. W. | 45  | "    | 9-11  | "                        | "             | "             | "             | "                 |
| C. W. | 28  | "    | 9-0   | "                        | "             | "             | "             | "                 |
| C. W. | 39  | "    | 5-2   | "                        | "             | "             | "             | "                 |
|       |     |      | 4828  | Lin. ft.                 | @             | .25           |               | 1207.             |
| C. F. | 352 | pcs. | 11-0  | cove mold                | $\frac{1}{2}$ | x             | $\frac{5}{8}$ |                   |
| C. F. | 45  | "    | 10-0  | "                        | "             | "             | "             | "                 |
| C. F. | 28  | "    | 9-0   | "                        | "             | "             | "             | "                 |
| C. F. | 39  | "    | 5-2   | "                        | "             | "             | "             | "                 |
|       |     |      | 5160  | Lin. ft.                 | @             | .05           |               | 258.              |
| C. F. | 38  | pcs. | 9-4   | back casing              | $\frac{3}{4}$ | x             | 2             | $\frac{3}{8}$     |
| C. F. | 830 | "    | 6-10  | "                        | "             | "             | "             | "                 |
|       |     |      | 6190  | Lin. ft.                 | @             | .18           |               | 1114.20           |
| No.   |     |      |       |                          |               |               |               |                   |
| Claim | 38  | pcs. | 9-4   | sub-jambs                | $\frac{3}{4}$ | x             |               |                   |
| "     | 830 | "    | 6-10  | "                        | "             | "             |               |                   |
| [591] |     |      |       |                          |               |               |               |                   |
| No.   | 322 | pcs. | 9-8   | head sub-jambs           |               |               |               |                   |
| Claim | 45  | "    | 9-2   | "                        | "             | "             |               |                   |
| No.   | 28  | "    | 8-0   | "                        | "             | "             |               |                   |
| Claim | 39  | "    | 4-4   | "                        | "             | "             |               |                   |
| C. F. | 76  | pcs. | 9-2   | window stops—hollow back | $\frac{5}{8}$ | x             | 2             |                   |
| C. F. | 780 | "    | 6-10  | "                        | "             | "             | "             | "                 |
| C. F. | 138 | "    | 2-4   | "                        | "             | "             | "             | "                 |
| C. F. | 39  | "    | 4-0   | "                        | "             | "             | "             | "                 |
| C. F. | 700 | "    | 4-6   | "                        | "             | "             | "             | "                 |
| C. F. | 44  | "    | 3-8   | "                        | "             | "             | "             | "                 |
|       |     |      | 10466 | Lin. ft.                 | @             | .18           |               | 1883.88           |
| C. F. | 8   | "    | 10-5  | window head casing       | $\frac{3}{4}$ | x             | 4             | $\frac{1}{2}$ fir |
| C. F. | 3   | "    | 9-10  | "                        | "             | "             | "             | "                 |
| C. F. | 20  | "    | 7-4   | window side casing       | $\frac{3}{4}$ | x             | 4             | $\frac{1}{2}$ fir |
| C. F. | 4   | "    | 10-0  | "                        | "             | "             | "             | "                 |

|       |    |      |                           |                                       |       |
|-------|----|------|---------------------------|---------------------------------------|-------|
| No.   | 11 | “    | 7-0 window mullion casing | $\frac{3}{4} \times 4$ made up fir    |       |
| Claim | 3  | “    | 9-11 window stool         | $1\frac{1}{8}$ fir                    |       |
| No.   | 6  | “    | 10-6 “ “ “ “              |                                       |       |
| Claim | 2  | “    | 5-6 “ “ “ “               |                                       |       |
| C. W. | 3  | pcs. | 10-0 window apron         | $\frac{3}{4} \times 3\frac{1}{2}$ fir |       |
| C. W. | 6  | “    | 10-6 window apron         | $\frac{3}{4} \times 3\frac{1}{2}$ “   |       |
| C. W. | 2  | “    | 5-6 “ “ “ “               |                                       |       |
|       |    |      | 114 Lin. ft. @ .08.....   |                                       | 9.12  |
| C. W. | 20 | pcs. | 6-10 Black casing fir     |                                       |       |
|       |    |      | 140 Lin. ft. @ .08.....   |                                       | 11.20 |
| No.   | 20 | pcs. | 6-10 sub-jambs fir        |                                       |       |
| Claim | 11 | “    | 9-8 head sub-jambs fir    |                                       |       |
| C. F. | 22 | “    | 6-10 window stops         | $\frac{5}{8} \times 2$ fir            |       |
| C. F. | 11 | “    | 4-6 “ “ “ “               |                                       |       |
|       |    |      | 209 Lin. ft. @ .08.....   |                                       | 16.72 |

## WOOD FRAMES FOR BANK BUILDING. FIR

|                   |     |                            |   |         |
|-------------------|-----|----------------------------|---|---------|
| In building       | 16  | Mullion frames             | $9-4\frac{3}{4} \times 9-3\frac{1}{4}$ OSM of frame               |         |
| 691 Openings      | 3   | “ “                        | $8-10 \times 9-3\frac{1}{4}$ “ “                                  |         |
| In Warehouse      | 36  | “ “                        | $8-10 \times 7-0\frac{1}{4}$ “ “                                  |         |
| 238 Openings      | 22  | “ “                        | $7-9\frac{1}{2} \times 7-0\frac{1}{4}$ “ “                        |         |
| 929               | “   | 227                        | “ “ $9-4\frac{3}{4} \times 7-0\frac{1}{4}$ “ “                    |         |
| “                 | “   | 2                          | “ “ $9-4\frac{3}{4} \times 7-0\frac{1}{4}$ with door opening      |         |
| “                 | “   | 60                         | Triple frames $9-4\frac{3}{4} \times 7-0\frac{1}{4}$ OSM of frame |         |
| “                 | “   | 9                          | “ “ $8-10 \times 7-0\frac{1}{4}$ “ “                              |         |
| “                 | “   | 26                         | Mullion frames $9-4\frac{3}{4} \times 7-0\frac{1}{4}$ “ “         |         |
| “                 | “   | 6                          | Triple frames $7-9\frac{1}{2} \times 7-0\frac{1}{4}$ “ “          |         |
| “                 | “   | 39                         | Single frames $4-0\frac{1}{4} \times 7-0\frac{1}{4}$ “ “          |         |
| 446 frames making | 929 | Openings @ \$10.00 ea..... |   | 9290.00 |

## WINDOWS. FIR

|                 |     |         |  |
|-----------------|-----|---------|--|
| All complete    | 32  | windows | $4-3 \times 8-10\frac{7}{8}$             |
| 977 pcs in      | 6   | “       | $3-11\frac{5}{8} \times 8-10\frac{7}{8}$ |
| Warehouse       | 452 | “       | $4-3 \times 6-7\frac{7}{8}$              |
| nearly complete | 72  | “       | $3-11\frac{5}{8} \times 6-7\frac{7}{8}$  |

|                     |    |   |                                       |
|---------------------|----|---|---------------------------------------|
| 847 pcs. in factory | 44 | " | 3-5 $\frac{3}{8}$ x 6-7 $\frac{7}{8}$ |
| In factory          | 75 | " | 3-7 x 6-7 $\frac{7}{8}$               |

[592]

EXHIBIT "A"-1.

|                 |             |   |                                       |
|-----------------|-------------|---|---------------------------------------|
| All complete    | 120 windows |   | 2-1 $\frac{3}{4}$ x 6-7 $\frac{7}{8}$ |
| 977 pcs. in     | 18          | " | 22 $\frac{3}{8}$ x 6-7 $\frac{7}{8}$  |
| Warehouse       | 12          | " | 16 $\frac{1}{8}$ x 6-7 $\frac{7}{8}$  |
| Nearly complete | 52          | " | 4-3 x 6-7 $\frac{7}{8}$               |
| 847 pcs. in     | 39          | " | 3-9 x 6-7 $\frac{7}{8}$               |

Factory—  
in factory.

924 Windows or 1824 pcs. of sash @ \$3.50 ea..... 6384.00

DOORS. MAHOGANY

|            |                           |                             |               |            |
|------------|---------------------------|-----------------------------|---------------|------------|
| Nearly     | 200 doors                 | 3-0 x 7-0 x 2 mahogany      | 1 light glass |            |
| Complete   | @ \$20.00                 |                             |               | 4000.00    |
| in factory | 250                       | " 3-0 x 7-0 x 2 mahogany    | 1 panel       |            |
|            | @ \$20.00                 |                             |               | 5000.00    |
|            | 200 mahogany transom sash | 3-0 x 1-3 x 1 $\frac{3}{4}$ |               |            |
|            | 1 light @ \$2.25          |                             |               | 500.00     |
|            |                           |                             |               | \$58555.92 |

NOTE: Prices set opposite last three items are for cost as far as completed only.

[593]

Sold to:

SCANDINAVIAN-AMERICAN BANK BUILDING COMPANY, CITY.

EXHIBIT "B"-1.

|       |          |                             |                                   |
|-------|----------|-----------------------------|-----------------------------------|
| C. F. | 400 pcs. | 8-11 Common fir door bucks, | 2 $\frac{1}{2}$ x 5 $\frac{5}{8}$ |
|       | 500      | " 7-4                       | " " " " " "                       |
|       | 450      | " 3-10                      | " " " " " "                       |

Above material as per contract..... 1266.00

[594]



Sold to:

SCANDINAVIAN-AMERICAN BANK BUILDING COMPANY, CITY.

All material to be mahogany unless otherwise specified.

## EXHIBIT "C"-1.

## BANKING ROOM FRAMES.

|              |                  |                           |            |                                       |          |
|--------------|------------------|---------------------------|------------|---------------------------------------|----------|
| All complete | 2 frames         | 8-4 $\frac{1}{8}$ x 19-3  | OSM trans. | 4-6 $\frac{3}{8}$                     | fir      |
| 11 in Bldg.  | 4 "              | 9-3 x 19-3                | " "        | " "                                   | " "      |
| 9 in factory | 2 "              | 7-9 $\frac{1}{8}$ x 19-3  | " "        | " "                                   | " "      |
| " "          | 4 "              | 8-1 x 19-3                | " "        | " "                                   | " "      |
| " "          | 2 "              | 7-5 $\frac{3}{4}$ x 19-2  | " "        | " "                                   | " "      |
| " "          | 1 "              | 7-6 $\frac{1}{4}$ x 19-3  | " "        | " "                                   | " "      |
| " "          | 2 transom frames | 9-3 x 5-0                 | sash       | 4-6 $\frac{3}{8}$                     | high fir |
| " "          | 1 "              | " 8-4 $\frac{1}{8}$ x 5-0 | "          | " "                                   | " "      |
| " "          | 1 triple         | 8-4 $\frac{1}{8}$ x 6-3   | sash       | 2-6 $\frac{3}{8}$ x 5-9 $\frac{1}{8}$ | fir      |
| " "          | 1 "              | 8-4 $\frac{1}{8}$ x 5-6   | "          | 2-6 $\frac{3}{8}$ x 5-0 $\frac{1}{8}$ | "        |

## BANKING ROOM WINDOW TRIM.

|               |      |              |                         |              |     |
|---------------|------|--------------|-------------------------|--------------|-----|
| C. F. 30 pes. | 16-0 | inside stops | 15/16 x 2 $\frac{5}{8}$ | mahogany     |     |
| C. F. 36 "    | 5-0  | " "          | " "                     | " "          | " " |
| C. F. 6 "     | 6-6  | " "          | " "                     | " "          | " " |
| C. F. 6 "     | 5-6  | " "          | " "                     | " "          | " " |
| C. F. 27 "    | 8-6  | " "          | " "                     | " "          | " " |
| C. F. 19 "    | 9-6  | " "          | " "                     | " "          | " " |
| C. F. 12 "    | 7-9  | " "          | " "                     | " "          | " " |
| C. F. 8 "     | 8-0  | " "          | " "                     | " "          | " " |
| C. F. 30 pes. | 20-0 | jamb casing  | 1 1/16 x 1 1/16         | S4S mahogany |     |
| C. F. 6 "     | 5-0  | " "          | " "                     | " "          | " " |
| C. F. 2 "     | 5-6  | " "          | " "                     | " "          | " " |
| C. F. 2 "     | 6-6  | " "          | " "                     | " "          | " " |
| C. F. 5 "     | 8-9  | " "          | " "                     | " "          | " " |
| C. F. 4 "     | 8-6  | " "          | " "                     | " "          | " " |
| C. F. 2 "     | 8-2  | " "          | " "                     | " "          | " " |
| C. F. 3 "     | 8-0  | " "          | " "                     | " "          | " " |
| C. F. 6 "     | 9-8  | " "          | " "                     | " "          | " " |

|       |    |      |      |                   |                 |          |   |
|-------|----|------|------|-------------------|-----------------|----------|---|
| C. F. | 2  | pcs. | 8-0  | 1 1/16 x 3 9/16   | S4S             | mahogany |   |
| C. F. | 4  | "    | 8-3  | "                 | "               | "        | " |
| C. F. | 2  | "    | 8-6  | "                 | "               | "        | " |
| C. F. | 3  | "    | 7-9  | "                 | "               | "        | " |
| C. F. | 4  | "    | 9-6  | "                 | "               | "        | " |
| C. F. | 5  | pcs. | 8-9  | 1 1/16 x 2        | S4S             | mahogany |   |
| C. F. | 4  | "    | 8-6  | "                 | "               | "        | " |
| C. F. | 2  | "    | 8-2  | "                 | "               | "        | " |
| C. F. | 3  | "    | 7-10 | "                 | "               | "        | " |
| C. F. | 6  | "    | 9-8  | "                 | "               | "        | " |
| C. F. | 30 | pcs. | 20-0 | mahogany bed mold | 1 11/16 x 1 3/4 |          |   |
| C. F. | 6  | "    | 5-0  | "                 | "               | "        | " |
| C. F. | 2  | "    | 5-6  | "                 | "               | "        | " |
| C. F. | 2  | "    | 6-6  | "                 | "               | "        | " |
| C. F. | 10 | "    | 8-9  | "                 | "               | "        | " |
| C. F. | 8  | "    | 8-6  | "                 | "               | "        | " |
| C. F. | 4  | "    | 8-4  | "                 | "               | "        | " |
| C. F. | 6  | "    | 8-0  | "                 | "               | "        | " |
| C. F. | 3  | "    | 10-0 | "                 | "               | "        | " |

Material as above and on preceding sheet..... 1957.00

Banking rooms—

[595]

Sold to:

SCANDINAVIAN-AMERICAN BANK BUILD-  
ING COMPANY, CITY.

EXHIBIT "D"—1

LABOR CONTRACT ON BUILDING.

|   |          |
|---|----------|
| Mitering, gluing up, smoothing off and<br>making rabbet for base on 900 sides<br>door casing @ \$2.00 ..... | 1800.00  |
| Mitering up, gluing up and smoothing off<br>39 sides window casing @ \$2.00 .....                           | 78.00    |
| Mitering and smoothing off 405 sides win-<br>dow casing @ \$2.00 .....                                      | 810.00   |
| Fitting 1848 pieces of sash into frames and<br>preparing for hardware @ \$1.50.....                         | 2772.00  |
| Squaring ends of 180,000 feet of base, and<br>working tongue on ends @ .02¢ per<br>foot .....               | 360.00   |
| Work on 446 aprons, returning molding on<br>ends and bringing to exact lengths @<br>.50 each .....          | 223.00   |
|   | \$643.00 |

[596]

Sold to:

SCANDINAVIAN-AMERICAN BUILDING  
COMPANY, CITY.

EXHIBIT "E"—1.

EXTRA: Not on contract.

80 pcs. scaffold bucks .....

\$200.00

[597]

Sold to:

SCANDINAVIAN-AMERICAN BUILDING  
COMPANY, CITY.

EXHIBIT "F"—1.

EXTRA: Not on contract.

40 pcs. wedges 4"x6"x18" ..... \$8.00  
[598]

Sold to:

SCANDINAVIAN-AMERICAN BUILDING  
COMPANY, CITY.

EXHIBIT "G"—1.

To premium on Contractor's surety Bonds to be  
paid for by Owner as per agreement .. \$718.41  
[599]

SUMMARY.

|  |          |           |
|--|----------|-----------|
| Exhibit "A" .....                                      | 58555.92 |           |
| "    "B" .....   | 1266.00  |           |
| "    "C" .....   | 1957.00  |           |
| "    "D" .....   | 6043.00  |           |
| "    "E" .....   | 200.00   |           |
| "    "F" .....   | 8.00     |           |
| "    "G" .....   | 718.41   |           |
|  | <hr/>    |           |
|  | 68748.33 |           |
| Credits May 14, 1920 .....                             | \$ 8.00  |           |
| "    Aug. 16, 1920 .....                               | 5100.00  |           |
| "    Sept. 18, 1920 .....                              | 1132.50  |           |
|  | <hr/>    |           |
|  | 6240.50  |           |
| Total credits.....                                     | 6240.50  |           |
| Balance due .....                                      |          | 62,507.83 |
| Profit entitled to on balance of "Labor Contract"..... |          | 6,000.00  |
| Profit entitled to on balance of "Main Contract".....  |          | 1,000.00  |
|  |          | <hr/>     |
| [599½]   |          | 69,507.83 |

**Exhibit No. 167.**

TACOMA MILLWORK SUPPLY CO.

Tacoma, Wash., Dec. 27, 1920.

Scandinavian-American Building Co.,

Argonne Building,

Tacoma, Wash.

Att.: Mr. Sherman Wells.

Dear Sir:

We wish to inquire if you can kindly offer us any relief in the matter of taking delivery of part of the exterior window frames, out of storage, this week. While we know this will doubtless be inconveniencing you, to some extent, with the building in present condition, it is, on the other hand, working a hardship on us for the reason that we are compelled to pay a rental of \$150.00 per month on part of the frames which we have on the lower floor of the warehouse. This, of course, is rapidly eating us up. We do not mind retaining one floor for storage, and while we realize it is a matter of merely our own concern to maintain warehouse space, still we know you will appreciate the fact that delivery of the frames to the building has been greatly delayed, through no fault of ours. In fact our contract time on the entire building is now about up. So we thought with these points in view you would doubtless be very glad to do the very best you can, under the circumstances, toward taking delivery of some of the frames and, if so, we would like to get them moved out this week, to avoid another month's rent, if possible,



so kindly let us have your disposition in the matter,  
and [600] greatly oblige,

Yours respectfully,

TACOMA MILLWORK SUPPLY CO.,

By R. T. DAVIS, Jr.

M. D.

SCANDINAVIAN-AMERICAN BUILDING CO.

Tacoma, Washington.

December 30, 1920.

Tacoma Millwork Supply Co.,

City.

Gentlemen:

In answer to yours of December 27th in reference to taking part of the exterior window frames out of storage this week, I have given this matter consideration and I cannot see our way clear to receive any frames at the job right away. I had been in hopes of being able to handle four floors of frames by this time, but owing to the shortage of riveters the steel erector has not been able to get out of the way. I hope to have room for part of the frames by the 15th of January and if I can see my way clear sooner I will advise you.

Very truly yours,

SCANDINAVIAN-AMERICAN BUILDING CO.

By SHERMAN WELLS,

Superintendent.

SW. C. [601]

**Exhibit No. 168.**

TACOMA MILLWORK SUPPLY CO.

Tacoma, Wash., March 8, 1921.

Mr. F. P. Haskell, Jr.,

Receiver for Scandinavian-American Building  
Co.,

Tacoma, Washington.

Dear Sir:

Inasmuch as you are the Receiver for the above-mentioned Building Company, we think you should have sole custody of the warehouse at 2140-42 Pacific Avenue, second floor, which we have rented through an understanding with the Building Company for delivery of our goods pending completion of the building to a point where they could take care of the goods without damage from the weather.

There is a considerable quantity, as you will find, of sash, frames, and mahogany base, casing, etc. in this warehouse.

We have heretofore paid \$100.00 per month to W. H. Opie & Co., agents, for rental, in addition to paying light and water charges, on a month to month basis.

Inasmuch as this material has automatically come under your jurisdiction, we wish to tender you herewith the key to same.

Yours respectfully,

TACOMA MILLWORK SUPPLY CO.

By R. T. DAVIS, Jr.,

Manager. [602]

EXHIBIT No. 168 (Con.)

March 8, 1921.

Tacoma Millwork Supply Company,  
Center & Alaska Streets,  
Tacoma, Washington.

Gentlemen:

Your letter dated March 8th together with a key, was brought into the bank this morning, and laid on my desk by your Assistant Manager. This warehouse, together with its contents, never has been under the jurisdiction of the Scandinavian-American Building Company and is not now and never has been under my jurisdiction as Receiver of the Building Company. Inquiry develops the fact that you have rented the building yourself, have paid the rent and have kept the property insured against loss by fire. Not only that, you were to deliver the material to the building site as soon as it was required in the construction of the building.

I shall not attempt to take possession of the property and I return to you herewith the key which was left on my desk this morning.

Very truly yours,

F. P. HASKELL, Jr.,

Special Deputy Bank Commissioner.

GEK/H. [603]

**Exhibit No. 170.**

TACOMA MILLWORK SUPPLY COMPANY.

Tacoma, Wash. July 30, 1920.

Sold to—Scandinavian-American Building Co., Ar-  
gonne Bldg., City.

Shipped to—storeroom at 2140 Pacific Ave.

680 Window Frame openings in storage

at 2140 Pacific Ave. . . . . \$6800.00

Pay 75% as per

ENTERED

Contract balance

D. B. 8/4—130

in 30 &amp; 60 days

I. R. Page 20

\$5,100 Paid by check #449 8/16.

O. K.—S. WELLS.

FARRINGTON &amp; BARNUM,

Auditors.

W. N. M. [604]

**Exhibit No. 171.**

TACOMA MILLWORK SUPPLY COMPANY.

Tacoma, Wash., Aug. 23, 1920.

Sold to—Scandinavian-American Bldg. Co., Tacoma,  
Wash.

Shipped to—warehouse at 2140 Pacific Ave., City.

16 Mullion wd. frames 9-4<sup>3</sup>/<sub>4</sub>x9-3<sup>1</sup>/<sub>4</sub>3 Mullion wd. frames 8-10x9-3<sup>1</sup>/<sub>4</sub>36 Mullion wd. frames 8-10x7-0<sup>1</sup>/<sub>4</sub>22 Mullion wd. frames 7-9<sup>1</sup>/<sub>2</sub>x7-0<sup>1</sup>/<sub>4</sub>226 Mullion wd. frames 9-4<sup>3</sup>/<sub>4</sub>x7-0<sup>1</sup>/<sub>4</sub>60 Triple wd. frames 9-4<sup>3</sup>/<sub>4</sub>x7-0<sup>1</sup>/<sub>4</sub>

9 Triple wd. frames 8-10x7-0<sup>1</sup>/<sub>4</sub>  
6 Triple wd. frames 7-9<sup>1</sup>/<sub>2</sub>x7-0<sup>1</sup>/<sub>4</sub>  
Total 831 openings  
Less 680 openings Billed July 30-'20

151 openings @ \$10.00 . . . . . \$1510.00  
Pay 75%.

ENTERED

D. B. 8/23—146.

I. R. Page 25.

Sep. 18, 1920.

Ck. 502.

1132.50.

O. K.—S. WELLS. [605]

**Exhibit No. 172.**

**NOTICE OF CLAIM OF LIEN.**

State of Washington,  
County of Pierce,—ss.

ANN DAVIS and R. T. DAVIS, Jr., as Executors  
of the Estate of R. T. DAVIS, Deceased;  
R. T. DAVIS, Jr., LLOYD DAVIS,  
HARRY L. DAVIS, MAUDE DAVIS,  
MARIE A. DAVIS, RUTH G. DAVIS,  
HATTIE DAVIS TENNANT and ANN  
DAVIS, Copartners Doing Business Under  
the Name and Style of Tacoma Millwork &  
Supply Company,

Claimant,

vs.

**SCANDINAVIAN-AMERICAN BUILDING CO.**



NOTICE OF CLAIM OF LIEN OF LABORER  
AND MATERIALMAN.

NOTICE IS HEREBY GIVEN that Tacoma Millwork & Supply Co., a partnership above described, did on the 28th day of February, 1920, at the request of Scandinavian-American Building Company, commence to furnish material and perform labor upon that certain building or structure situated upon the following described land, to wit: Lots Ten (10), Eleven (11) and Twelve (12) in Block One Thousand and Three (1003), as the same are shown and designated upon a certain plat entitled "Map of New Tacoma, W. T.," which was filed for record in the office of the auditor of Pierce County, Washington Territory, February 3, 1875, in Pierce County, State of Washington.

That Scandinavian-American Building Co. is now and at all times herein mentioned has been, the owner and reputed owner of the said land and the said building or structure situated thereon, for the construction of said building or structure and for the ordering of material and labor therefor.

That all of said land hereinabove described is necessary for the convenient use and occupation of the said building or structure.

That the furnishing of said material and the performance of said labor ceased on the 17th day of January, 1921.

That the value of said material and labor was and is \$——, no part of which has been paid except the sum of \$——; that the claimant, the undersigned, claims a lien upon said building and struc-

ture above described and the land upon which the same is situated as above described for the sum of \$——, the amount still due for said labor and material; that of the sum still remaining due the sum of \$—— is for labor and the sum of \$—— is for material furnished as aforesaid. That the foregoing lien is based upon an erection contract dated February 28, 1920, between claimant and said Scandinavian-American Building Company, involving a total of \$30,000 for the erection of certain millwork described in said contract; to be placed in the building situated upon the property above mentioned, and that the owner has refused to continue said work although a great portion has been made up especially for easy and efficient erection, and a reasonable profit from said contract is and would have been the sum of \$10,500, and that the said sum is now owing claimant hereunder. [606]

State of Washington,  
County of Pierce,—ss.

R. T. Davis, being sworn says: I am the manager and a partner of Tacoma Millwork Supply Co., claimant above named; I have heard the foregoing claim read and know the contents thereof and believe the same to be just.

R. T. DAVIS, Jr.

Subscribed and sworn to before me this 14th day of January, 1921.

H. J. DOTEN,  
Notary Public in and for the State of Washington,  
Residing at Tacoma, County and State Aforesaid.

585425. Notice of Claim of Lien—Laborer or Materialman. Filed for Record at Request of Tacoma Millwork Supply Co., Jan. 10, 1921, at 33 minutes past 4 P. M., and Recorded in Volume 15 of Liens, Page 629, Records of Pierce County, State of Washington. C. A. Campbell, Auditor of Said County. By A. L. Kelly, Deputy.

**Exhibit No. 173.**

NOTICE OF CLAIM OF LIEN.

State of Washington,  
County of Pierce,—ss.

ANN DAVIS and R. T. DAVIS, Jr., as Executors of the Estate of R. T. DAVIS, Deceased; R. T. DAVIS, Jr.; LLOYD DAVIS; HARRY L. DAVIS; MAUDE A. DAVIS; MARIE A. DAVIS; RUTH G. DAVIS; HATTIE DAVIS TENNANT and ANN DAVIS, Copartners Doing Business Under the Name and Style of Tacoma Millwork Supply Company,

Claimant,

vs.

SCANDINAVIAN-AMERICAN BUILDING CO.  
NOTICE OF CLAIM OF LIEN OF LABORER  
AND MATERIALMAN.

NOTICE IS HEREBY GIVEN that Tacoma Millwork & Supply Co., a partnership as above described, did on the 28th day of February, 1920, at the request of Scandinavian-American Building Company commence to furnish material and perform la-

bor upon that certain building or structure, situated upon the following described land, to wit: Lots Ten (10), Eleven (11) and Twelve (12) in Block One Thousand and Three (1003), as the same are shown and designated upon a certain plat entitled "Map of New Tacoma, W. T.," which was filed for record in the office of the auditor of Pierce County, Washington Territory, February 3, 1875, in Pierce County, State of Washington.

That Scandinavian-American Building Co. is now and at all times herein mentioned has been, the owner and reputed owner of the said land and the said building or structure situated thereon, for the construction of said building or structure and for the ordering of material and labor therefor.

That all of said land hereinabove described is necessary for the convenient use and occupation of the said building or structure.

That the furnishing of said material and the performance of said labor cease on the 17th day of January, 1921.

That the value of said material and labor was and is \$——, no part of which has been paid except the sum of \$——; that the claimant, the undersigned, claims a lien upon said building and structure above described and the land upon which the same is situated as above described for the sum of \$——, the amount still due for said labor and material; that of the sum still remaining due the sum of \$—— is for labor and the sum of \$—— is for material furnished as aforesaid.

That the foregoing involved a building contract

for furnishing of millwork at a total of \$65,000.00, on which deliveries have been made in the approximate amount of \$44,000.00, still unpaid, and that the balance of said contract would if claimant had been permitted to complete it have netted him a profit of \$3,000.00, which is now due claimant.

TACOMA MILLWORK SUPPLY CO.

By R. T. DAVIS, Jr.,

Mgr. [607]

State of Washington,  
County of Pierce,—ss.

R. T. Davis, Jr., being sworn says: I am the manager and one of the parties of Tacoma Millwork & Supply Co., a partnership, claimant above named; I have heard the foregoing claim read and know the contents thereof and believe the same to be just.

R. T. DAVIS, Jr.

Subscribed and sworn to before me this 19th day of January, 1921.

H. J. DOTEN,

Notary Public in and for the State of Washington,  
Residing at Tacoma, County and State Aforesaid.

585424. Notice of Claim of Lien—Laborer or Materialman. Filed for Record at Request of Tacoma Millwork & Supply Co., Jan. 19, 1921, 32 minutes past 4 P. M., and Recorded in Volume 15 of Liens, Page 628, Records of Pierce County, State of Washington. C. A. Campbell, Auditor of said County. By A. L. Kelly, Deputy.



**Exhibit No. 174.**

**NOTICE OF CLAIM OF LIEN.**

State of Washington,  
County of Pierce,—ss.

ANN DAVIS and R. T. DAVIS, Jr., as Executors  
of the Estate of R. T. DAVIS, Deceased;  
R. T. DAVIS, Jr., LLOYD DAVIS;  
HARRY L. DAVIS; MAUDE A. DAVIS;  
MARIE A. DAVIS; RUTH C. DAVIS;  
HATTIE DAVIS TENNANT and ANN  
DAVIS, Copartners Doing Business Under  
the Name and Style of Tacoma Millwork  
Supply Company,

Claimant,

vs.

SCANDINAVIAN-AMERICAN BUILDING  
CO., a Corporation, et al.

**NOTICE OF CLAIM OF LIEN OF LABORER  
AND MATERIALMAN.**

NOTICE IS HEREBY GIVEN that Tacoma  
Millwork & Supply Co., a partnership, above de-  
scribed, did on the 28th day of February, 1920, at  
the request of Scandinavian-American Building  
Company, commence to furnish material and per-  
form labor upon that certain building or structure,  
situated upon the following described land, to wit:  
Lots Ten (10), Eleven (11), and Twelve (12), in  
Block One Thousand and Three (1003), as the same  
are shown and designated upon a certain plat enti-



tled "Map of New Tacoma, W. T.," which was filed for record in the office of the auditor of Pierce County, Washington Territory, February 3, 1875, in Pierce County, State of Washington.

That Scandinavian-American Building Co. is now and at all times herein mentioned has been, the owner and reputed owner of the said land and the said building or structure situated thereon, for the construction of said building or structure and for the ordering of material and labor therefor.

That all of said land hereinabove described is necessary for the convenient use and occupation of the said building or structure.

That the furnishing of said material and the performance of said labor ceased on the 17th day of January, 1921.

That the value of said material and labor was and is \$75,748.33, no part of which has been paid except the sum of \$6,240.50; that the claimant, the undersigned, claims a lien upon said building and structure above described and the land upon which the same is situated as above described for the sum of \$69,507.83, the amount still due for said labor and material; that of the sum still remaining due the sum of \$6,043.00 is for labor and the sum of \$63,-464.83 is for material furnished as aforesaid, with this qualification: That in said balance now designated as and for material said balance contains a profit amount of \$6,000 on the labor or erection contract, and contains also a profit amount of \$1,000 upon the main millwork contract, and said balance likewise contains certain percentages of labor that

are customary and usual in the manufacturing of such millwork, being the factory labor represented in the finished product which has not been segregated, in that practically all of said balance after deducting said \$7,000 just mentioned is made up of contract work, the price for which was agreed upon.

TACOMA MILLWORK SUPPLY CO.

By R. T. DAVIS, Jr.,  
Mgr. [608]

State of Washington,  
County of Pierce,—ss.

R. T. Davis, Jr., being sworn says: I am the manager and one of the partners of Tacoma Millwork Supply Company, a partnership, claimant above named; I have heard the foregoing claim read and know the contents thereof and believe the same to be just.

R. T. DAVIS, Jr.

Subscribed and sworn to before me this 7th day of April, 1921.

FRANK C. NEAL,  
Notary Public in and for the State of Washington,  
Residing at Tacoma, County and State Aforesaid.

593021. Filed by Flick & Paul. April 7, 1921.  
Lien Record 16, Page 63, at 2:37 P. M. C. A.  
Campbell, County Auditor, Pierce County. Wash.  
By A. L. Kelly, Deputy.

**Exhibit No. 176.**

TACOMA MILLWORK SUPPLY COMPANY.

Tacoma, Wash., Jan. 6, 1921.

Sold to Scandinavian-American Bldg. Co.,  
Argonne Bldg., City.Shipped to warehouse at 2142 Pacific Ave.,  
City.

812 pcs. sash ..... \$2842.00

Estimate on contract. [609]

## EXHIBIT No. 176.

TACOMA MILLWORK SUPPLY COMPANY.

Tacoma, Wash., Jan. 6, 1921.

Sold to Scandinavian-American Bldg. Co.,  
Argonne Bldg., City.Shipped to Bank Bldg., at 11th & Pacific  
Ave.

To estimate on exterior window frames for

Banking Quarters ..... \$1400.00

FARRINGTON &amp; BARNUM, INC.,

Auditors.

W.N. M. [610]

## EXHIBIT No. 176.

TACOMA MILLWORK SUPPLY COMPANY.

Tacoma, Wash., Dec. 31, 1920.

Sold to Scandinavian-American Bldg. Co.,  
Argonne Bldg., City.

Shipped to warehouse at 2142 Pacific Ave.

ON CONTRACT.

|                                    |           |
|------------------------------------|-----------|
| 18000 1ft. Mahogany base . . . . . | \$7200.00 |
| 445 pcs. window apron . . . . .    | 2002.50   |
|                                    | <hr/>     |
|                                    | 9202.50   |

FARRINGTON & BARNUM, INC.,  
Auditors.  
W. N. M. [611]

EXHIBIT No. 176.

TACOMA MILLWORK SUPPLY COMPANY.

Tacoma, Wash., Dec. 31, 1920.

Sold to—Scandinavian-American Bldg. Co., Ar-  
gonne Bldg., City.

Shipped to—Warehouse at 2142 Pacific Ave.,

ON CONTRACT.

|                                    |           |
|------------------------------------|-----------|
| 18000 1ft. Mahogany base . . . . . | \$7200.00 |
| 445 pcs. window apron . . . . .    | 2002.50   |
|                                    | <hr/>     |
|                                    | \$9202.50 |

FARRINGTON & BARNUM, INC.,  
Auditors.  
W. N. M. [612]

**Exhibit No. 191.**

Tacoma, Washington, February 23d, 1920.

Mr. Frederick W. Webber,  
Room 143, Tacoma Hotel,  
Tacoma, Washington.

Dear Sir:

We herewith beg to enclose five copies of the

agreement in the form arranged between yourself and the writer yesterday.

Kindly have them signed and the writer will call for a copy late this afternoon.

We have commenced to design the dies and will put the work in hand immediately. We will be ready with the material before you actually require it.

Thanking you for the business and promising you our full co-operation, we are,

Very truly yours,

FAR WEST CLAY COMPANY.

By A. G. CRAIG. (Signed)

AGC. [613]

**Exhibit No. 192.**

February 25th, 1920.

Mr. Frederick Webber,  
Tacoma Hotel,  
Tacoma, Washington.

Dear Sir:

I am directed by the Washington Brick, Lime & Sewer Pipe Company to forward you the enclosed five copies of proposed contract between the Scandinavian-American Building Company and the Washington Brick, Lime & Sewer Pipe Company, which have been executed on behalf of the Washington Brick, Lime and Sewer Pipe Company.

You will note that a new section 5½, has been added and section 14 eliminated. This, I under-

stand, is in conformity with the oral agreement made with Mr. Piollet.

Yours very truly,  
CHAS. P. LUND.

CPL: MCM.

Encs. (5). [614]

EXHIBIT No. 192.

Tacoma, Washington, February 19th, 1920.

Mr. Frederick Webber,  
Tacoma, Washington.

Dear Sir:

We propose to furnish the Architectural Terra Cotta for the proposed 16-story Scandinavian-American Bank Building for the Scandinavian-American Bank Building Company, which it is proposed to erect at Eleventh Street and Pacific Avenue, Tacoma, Washington, for the sum of One Hundred Nine Thousand (\$109,000) Dollars.

This bid covers the exterior facing shown on the plans as Indiana Limestone from the top of that point shown on the plans as 10 cut hammered granite to top of pent house, four sides of building.

It also includes the part on the alley elevation marked as 10 cut hammered granite, as Ashlar Terra Cotta.

We agree to give you free of charges the services of an experienced Terra Cotta setter and fitter.

This price of \$109,000 is for delivery at building site.



We are in position to make deliveries as outlined by you.

Very truly yours,  
WASHINGTON BRICK, LIME &  
SEWER PIPE CO.

By V. E. PIOLLET,  
Vice-president. [615]

**Testimony of M. L. Bryan, for Washington Brick,  
Lime & Sewer Pipe Company.**

M. L. BRYAN, a witness called and sworn on behalf of the Washington Brick, Lime & Sewer Pipe Co., testified as follows:

Direct Examination.

(By Mr. LUND.)

I am superintendent of the terra cotta department of the Washington Brick, Lime & Sewer Pipe Company, and was in 1920; I am familiar with the contract between this company and the Scandinavian-American Building Company, for terra cotta.

The processes of terra cotta manufacture originates with original drawings prepared by the architect; after the plans are drawn, they are sent to the terra cotta manufacturer for figuring and interpretation upon which an estimate is made and a bid made for the material. After the awarding of the contract, the architect is supposed to furnish complete information whereby we can take his drawings and joint them, make the pieces and the sizes which are technically possible, arrange for the pieces to fit, and for the anchoring, all of which information we put on our drawings and send to

(Testimony of M. L. Bryan.)

the architect for his approval which we have to get after preparing our plans. After the drawings are approved by the architect, we make a schedule of the different kinds and classes of pieces on that building and then make plaster paris models of each one of those units from which a plaster paris mold is made wherein we can duplicate as many pieces in clay as necessary to complete the schedules. The molds after being made go to a department which we call the preserving department and the clay is then pounded into the molds. After setting in the molds a sufficient time,—the clay is in a plastic condition [616] when put into the molds,—after the material stays in the molds a sufficient time to stand of its own weight, enough water has been absorbed by the molds to allow it to stand, the mold is turned over and the stuff is taken out of the mold,—that is, the mold is taken apart and the piece is then finished,—all the seams and rough parts, finger-marks, and things of that sort, are rubbed off after which it is dried and then a superficial coat of clay glazing material is put on and it is sent to the kilns. In the kilns the material is burned in a temperature of about 2,000 degrees Fahrenheit, and this process takes about eight or nine days. When the material is cool enough for handling, the kiln is opened and it is then taken to our fitting department where it is assembled and marked showing the place it is to go corresponding to the places on the drawings for which it is shaped.

(Testimony of M. L. Bryan.)

The first shipment of terra cotta for the Scandinavian-American Bank Building, left the factory September 13, 1920. The first shipment was made on the 17th of September and the last shipment on the 13th day of January, 1921. Thirteen cars of material all told were shipped from the plant to Tacoma. I saw the greater part of it here after it had arrived.

Exhibit No. 130, which I have prepared, is what we call the "key plan" showing the different sets of terra cotta on this building. All that part colored red with red pencil is material that is in Tacoma; that part which is colored yellow, is material that is assembled and ready for shipment at the factory; that part which is colored brown, is material that has been burned and is in our factory but has not been assembled; that part which is not colored, represents material [617] in various stages of manufacture at the plant. The entire quantity of terra cotta covered by our contract, was 24,180 cubic feet; 13,035 cubic feet were shipped; 5,340 cubic feet were manufactured and fitted and is in our shop or sheds at Clayton, Washington. Of the balance of the material, 2,500 cubic feet are burned, but not fitted, ready to be assembled; there are 1,787 cubic feet dressed and treated ready for the glaze to be applied and go to the kilns; 1,266 feet of raw molds, material that molds have been made for; and 252 feet for which molds have not been made but for which drawings are completed.

I have been in the business of manufacturing

(Testimony of M. L. Bryan.)

terra cotta approximately seventeen years and am familiar with its value.

Q. I will ask you to state what the value of the material which was shipped to Tacoma was, according to the contract price?

By Mr. OAKLEY.—I object to that question, irrelevant, incompetent and immaterial. They have got to show under the terms of their contract, which must be introduced here, that there has been a delivery at the plant of the Scandinavian-American Building Company. There has been no such delivery proven or made, in fact. For that reason we object to this question.

Mr. LUND.—That is, of course, a question of fact for your Honor to determine from the evidence.

By the COURT.—If you fail to show delivery, I think it ought to go out. You can get it in in any way you see fit. Objection overruled.

WITNESS.—\$58,657.50.

By Mr. OAKLEY.—That is your first item?

By Mr. LANGHORNE.—Item of material delivered. [618]

WITNESS.—That is 13,035 cubic feet which has been delivered in Tacoma.

Q. Now, what is the value of the material that has been manufactured, fitted and is ready for shipment?

By Mr. OAKLEY.—My objection will run through to all these questions.

By the COURT.—Objection noted, but it will be further considered on argument.

(Testimony of M. L. Bryan.)

The value of the material shipped to Tacoma, according to the contract price, was \$58,657.50; that is 13,035 cubic feet which have been delivered to Tacoma; the next item is material that is burned and not fitted, that is \$10,350.00. The next item is material that has been pressed, \$5,629.05; molds made but not pressed, \$13,010.31; the last item is \$34.02. The figures given represent the reasonable value of the material at the time.

Mr. Sherman Wells, who was superintendent of Construction of the Scandinavian-American Building Company, visited our plant at Clayton about the middle of June, 1920; at that time, some of the material had been manufactured ready for shipment; it was stored outside of our shipping-room in a temporary shed. At that time, Mr. Wells stated that his desire was to assemble all his material for the construction of that building in Tacoma so that he would have no delay in beginning and erecting the terra cotta. He stated he wanted [619] the material at Tacoma so they could have access to it as he needed it. As the material was shipped, a checking list was made for each car of material as it left the factory; we sent a duplicate to the Scandinavian-American Building Company at Tacoma, duplicate copies.

Wells stated he could not take the material at the building; there was no room to store it. That conversation came with Mr. Wells at a later date, regarding a place to store the material. After our first conversation, I discussed with him myself per-



(Testimony of M. L. Bryan.)

sonally on the matter of the delivery of the material in Tacoma, and obtained his permission to do so and our president and myself visited Tacoma in the first week in August, somewhere along the early part of August, and that matter was discussed again with Mr. Wells and Mr. Wells arranged a meeting with a transfer man in town here to discuss the matter of taking care of the material and suggesting a place to store it, which was a shipyard down here. That place was not used. The desire of Mr. Wells was to have the material in Tacoma for his call and he arranged, as I stated, a meeting so that this could be put through. He was pressing that particular point.

In case of breakage, it would be checked and pieces supplied so there would be no delay in taking the terra cotta and using it. The parts that were to be shipped first, were discussed. Mr. Wells desired the third story belt courses first and that he would check it and take care of it. The material was finally placed at the end of the Great Northern freight sheds. We obtained a man who was experienced in the handling and piling of material in the order in which it would be used, and had him on the job taking care of the material as [620] a further check on it. It was not practicable or possible to store this material at the building site; there is not sufficient area there without interfering with the rest of the construction work. Photographs marked Exhibits 131, 132, and 133 represent piles of terra cotta at the end of the Great Northern



(Testimony of M. L. Bryan.)

freight sheds, Tacoma, the terra cotta that was shipped to Tacoma by the company for use in this building. The area required to store that material is in fact larger than the space occupied by the building company. It would not have been possible to carry on the other construction work and take the material at the building.

Cross-examination.

(By Mr. OAKLEY.)

I knew that the point of delivery provided for in the contract was the building site of the building company. Our coast representative selected the site in Tacoma upon which the terra cotta was piled; that is Mr. Clarke, of Seattle. Upon these drawings marked Exhibit 130 all of the red material is on the Pacific Avenue elevation, starting immediately above the granite, the red strip across there. That is not figured in units. There is a belt set across that front, the Pacific Avenue elevation. That is the cornice, the first floor cornice, that one strip. The party line elevation takes up beginning at the roof of the adjoining building up to the top of the first story cornice. The rear or alley elevation called the court "A" elevation from the top or from the dentil court, after the first story up, and included the first story cornice. That would be I would judge about six or eight feet high; that would be the belt course on Pacific Avenue elevation and the Eleventh Street elevation; the granite comes up to the bottom line of the cornice. On the alley elevation, the terra cotta

(Testimony of M. L. Bryan.)

comes clear [621] to the street level. We furnished the terra cotta on the alley side from the level of the street up to the point indicated here that is the material on the alley elevation; that was not altogether satisfactory to the factory. We shipped it over here and we also returned it on finding it did not prove satisfactory. It was shipped here in the last car I think about January 15th; so that the building company could not put up any terra cotta on the alley side until January 13th or after. It would be practical for them to have used it but they did not care to do so. They could have put it at the angle irons and gone on up with it. This material on the first floor above the bank floor was loaded ready for shipment the day of the failure of the bank, That went all around the building except on the party line elevation where the building joins the next building,—the Pacific Avenue elevation. There was one story without any terra cotta; from the first office floor to the top of the windows of the first office floor.

This yellow on the map indicates material ready for shipment but not shipped. The material was ready to ship,—assembled and ready. The same thing prevailed on the Eleventh Street elevation, the first story cornice was delivered.

With reference to that conversation with Mr. Wells, the idea was Mr. Wells wanted the material all here. We started to ship before Mr. Wells,—in other words, we took it from the piles. Our first shipment was taken from the piles prematurely.

(Testimony of M. L. Bryan.)

We moved it to save reloading and to save re-storing, shipped it to Tacoma. That was at Wells' request, not for our own convenience. We were to have the whole amount on the job here. Our representative here in Tacoma was merely to take care of the terra cotta and to look after our interests in [622] the matter. He spent part of his time in Tacoma. I could not say exactly how much. We had several communications from Mr. Wells. I saw the letter marked Exhibit 134 from Mr. Wells, dated November 2, and addressed to our company. (Following is a copy of Exhibit 134:)

On examining the terra cotta that you have stored in the Northern Pacific Railway yards for our building, I notice that you have five distinct colors, while page nine of our specifications states that all terra cotta must be of even color and straight. A few of the pieces connected with the band course are yellow, while other pieces in the same course are white. I have called this matter to the attention of your man who is sorting and taking care of this material at the yard.

I also notice there are a number of snipped pieces and that your man is patching the same. According to our specifications no cracked pieces will be allowed to be placed in the building and I can see no reason for this terra cotta being patched, as you know the patches will all show up with age.

I notice in several places where terra cotta anchors are shown, on the plans, no provision has been made in the terra cotta to receive the anchors,

(Testimony of M. L. Bryan.)

so it will be necessary to punch holes thru the top web of the terra cotta to get the anchors in, and this will all have to be done by your man.

I am calling your attention to these matters before we get to setting so you will have time to make replacements, as I am certain Mr. Webber will not permit this job to go ahead with so many different colors in the terra cotta. Your man here is familiar with all these complaints and he informs me that he is sending you a list of damaged material and bad colors.

Trusting you will give this matter your attention at once, we are,

Very truly yours,

The band course is what we call the belt course, this little projecting course going around the building to sharpen up the surface. The anchor holes were not done, would not be done until such time as it was used on the building to find out just exactly where the anchor holes went. I got such report from our man here. His name is Glazier. I do not believe I have his report referred to in the letter. He has a memorandum of it and I am going to introduce him and show what report he [623] did make and the time we got it. He reported certain pieces broken and others were fractured and they were replaced to a certain extent and others were not. (Exhibit 135 admitted, being letter dated November 4, 1920, from Sherman Wells, Supt. of Scandinavian-American Building Com-

(Testimony of M. L. Bryan.)

panty to Washington Brick, Lime & Sewer Pipe Company.)

We received your full sized drawings of the main cornice and have checked same with Mr. Webber's drawings and find that they are O. K. We are returning them to you to-day and would thank you to acknowledge receipt of same.

When will you be ready to ship the cornice at the first office floor? So far the material you have shipped does not give us enough to start at any particular point and we would be pleased to know when you are going to ship material so that we can start the party line at the second mezzanine floor. I would also like to know when we can expect the material for the Court A elevation starting at the base course. We are setting steel at the first office floor level to-day and expect to move our derricks and put on the next two stories by this time next week. We feel that you have had ample time to get this material ready for us; in fact, it was promised to us before this. We would be pleased to have you advise us as to the exact and true condition of the terra cotta for our job. Very truly yours.

I had no information as to just exactly when that terra cotta referred to was delivered. I know it was made at that time. I knew that Mr. Wells was anxious to get the terra cotta work started and he took it up with me at different times. He first stated that the material he desired on the building was to start at the third floor cornice. That was



(Testimony of M. L. Bryan.)

his first statement, he made that in August a short time previous. At that time, the hanging of the first story cornice was in argument between Mr. Webber and ourselves, as to the method of hanging it, and it was not finally settled as to the space or outlookers until about the middle of August upon the occasion of Mr. Webber's visit to Tacoma. Mr. Wells could start in at the second or third office floor and could have gone up to the ninth floor level before the first of December. These drawings show no particular dates, they are a *resume* of [624] the condition of the job. These originate in our plant and would go to the building to show the men on the building just exactly where all of these sets go. I marked color on there to indicate the stage of completion about the middle of January; I am unable to state positively whether it was before or after the bank was taken over by the State Bank Examiner. This is a matter of reference; a factory has to keep in touch with the job. We keep it on all the jobs. We have done nothing further on this job since that time. We had a certain amount of this shipped, that is shown in red there. I also stated we had 5,340 cubic feet in our factory and in the shed at that time in January; have not manufactured any of the material since. It is exactly in the status it was there, except there has been just such work done as would remove the pieces that were in the way of our operations, moved them out of the way. That part of it is not now in our kilns. There might have been



(Testimony of M. L. Bryan.)

a few pieces in the kiln when Mr. Glenn was over there. There were not fifteen or twenty tons. I do not imagine there would be more than five at the outside. That was last Saturday. We have two or three large jobs in our shop, one of them the University of Washington job, and this Scandinavian-American bank material was in our way, in the way of our operations, and it was necessary to do something with the material. We had no place to store it. It is liable to become a total loss if water should get on the pieces before they are burned so that the question was to move them out of the road and get them in a permanent condition and out of the way. Of the terra cotta to be glazed, there is a total of what is to be made and what is to be pressed and what is on the press shop floor, approximately 110 tons [625] tons yet to be glazed. I would say about 20 tons of this material was glazed after the middle of January. That would be 20 tons off this 110. There were 252 feet for which the molds were to be made yet; 1250 feet were to be pressed and which of course would have to be glazed, and 1787 feet that we were drying. I would say that 20 tons, leaving 90 tons there to be glazed yet. There are 90 tons to be glazed yet to complete the job. That would be approximately 10% of the job. On the 15th of January, 1921, about 5,340 feet was completed for shipment at the plant, and fitted. There was 2,500 cubic feet that was burned but had to be assembled, that is, it had to be laid out, fitted to length and marked. With

(Testimony of M. L. Bryan.)

reference to the expression "molds had been made for," I mean molds that were made but not pressed. [626]

There would be thirty tons of material to get out a certain section or schedule letter, which would be "A," "B," "C" or "D," whatever it happened to be. Thirty tons of material out of molds in that schedule. There may be fifty molds. We may have pressed fifteen tons of that. There would be fifteen tons that was on the pressing shop floor. There would still be about fifteen tons in which the molds are made but not pressed. These molds still have a value. The labor has been expended on thirty tons of material for which we have only had fifteen tons. That one item there is 1/20, approximately 5% of the entire contract. We have done nothing further with it. As for the last item of 252 feet, the molds have not been made and the drawings have not been delivered. That is of a reasonable value of \$34.02.

Mr. LUND.—We will have a copy of the summary of all tabulations, the figures prepared and filed, and also have the notations made on the blueprint.

WITNESS.—That material that was shipped to Tacoma was consigned to the Local and Long Distance Transfer Co., a Tacoma concern. They took care of the material for the Washington Brick Co., transferring it to the storage yards. We employed them and paid that expense, and I think our company paid the rent on the storage yard.

(Testimony of M. L. Bryan.)

Cross-examination.

(By Mr. METZGER.)

There is 5,340 cubic feet manufactured and fitted in the sheds; that corresponds with the yellow colored portion of the blue-print, and there are 2,500 cubic feet that is burned but unfitted, corresponding to the brown colored [627] portion. The uncolored portions consist of three items, one of 1,780 cubic feet which has been dressed but not glazed; 1,266 cubic feet for which molds have been made but not yet filled or pored; and approximately 250 cubic feet for which only drawings have been made. These last three items are indicated on the blue-prints by the uncolored portions.

Redirect Examination.

(By Mr. LUND.)

The data contained upon the blue-prints and the figures I have given show all the status of the material on or about January 15, 1921. Since that date, in order to get rid of the material that was unfinished, and in our plants, we have done additional work and burned some of the material and moved it into our sheds. If that had not been done, it would be liable to become damaged so as to be useless.

All this material is especially designed for this particular building and has no value whatever for any other purpose. There is no such thing as stock material in terra cotta, that could be used on any other structure. This building was not, at any point, ready to begin the setting of terra cotta. As

(Testimony of M. L. Bryan.)

to why the first office floor material was not here, the first office floor cornice is supported entirely by steel. The spacing of the steel was given to us, or furnished to us but it was an impractical construction as the outlookers were irregularly placed and it would not work out to make a symmetrical joining with the rest of the building. I called the attention of Mr. Webber, the architect, to that fact. We corresponded with Mr. Webber from June until August when he was in Tacoma, and it was settled in August. I saw him here in Tacoma. [628] He admitted our suggestions to be the correct method to do it. We made the suggestions as to how it should be done. In the meantime there was material on the building job under the process of manufacture which made this step back into its turn without setting something else aside. It was a matter of over a month before this could be handled satisfactorily. In the ordinary course of business, approximately 123 days is a good and reasonable time for making large material of that kind. This is a fancy face. The material that we had not a car for shipment to Tacoma when advised that the bank had suspended, was the material immediately above the first floor cornice or that connecting between the red portions shown on here, on this cornice and the red above; that is the matter that Mr. Oakley referred to.

Recross-examination.

(By Mr. METZGER.)

The plans for our work, as originally prepared

(Testimony of M. L. Bryan.)

by Mr. Webber are not inaccurate or improper, but the way it was hung, the state of the yard was such it would destroy the symmetry of the joinings. The architectural effect would have been governed just as much by the joining of the building as it is by other architectural features; in fact it is an important architectural feature. We suggested changes in the architect's methods, and after two months' negotiations, he acquiesced in the changes.

**Testimony of A. G. Fosseen (A. B. Fosseen), for  
Washington Brick, Lime & Sewer Pipe Com-  
pany.**

A. G. FOSSEEN (A. B. FOSSEEN), a witness called on behalf of the Washington Brick, Lime & Sewer Pipe Co.

Direct Examination.

(By Mr. LUND.)

I am the president of the Washington Brick, Lime & Sewer Pipe Co., a corporation organized under the laws of this state, in 1911, and doing business as a corporation since [629] that time. Its principal place of business is Spokane, Washington. I was president of that corporation in 1919 and 1920. I know the signatures attached to Exhibit 136.

Exhibit 136, being the contract between the Washington Brick, Lime & Sewer Pipe Co. and the Scandinavian-American Building Co., was received in evidence. (Copy attached hereto pp. 47-51.)

We received that contract after February 28th;



(Testimony of A. G. Fosseen.)

to be exact, on the 12th of March. I am familiar with the manufacture of terra cotta in a general way. Terra cotta is manufactured for that particular building according to detailed specifications furnished by the architect after shop drawings have been drafted by our factory, which are drawn according to the architect's plans. I am familiar with the terra cotta that has been manufactured for the Scandinavian-American Bank Building. That material is not suitable for any other purpose than to use in that building except as grog; grog is material that can be reground to put in terra cotta again. It is worth about \$6 or \$8 a ton at the factory.

I executed a notice of lien and caused it to be filed in the Auditor's Office of Pierce County. That is my signature.

Exhibit 137, being the original lien notice of the Washington Brick, Lime & Sewer Pipe Co., is offered and received in evidence. (Copy attached hereto, p. 52.)

I had some conversation with representatives of the Scandinavian-American Building Co. with reference to delivering material at Tacoma under our contract. The first conversation I had was with Mr. Wells, Mr. Webber's representative here in Tacoma, during the month of August, 10th, 11th, 12th and 13th, I think all four of those days I saw him, [630] but just what day I talked with him I do not remember.



(Testimony of A. G. Fosseen.)

Mr. Wells was greatly perturbed over the non-delivery of the steel and he said,—“Mr. Fosseen, you see if these steel deliveries had not delayed us, you would have delayed us—better get busy and get this material here”; Mr. Bryan was here at the time and Mr. Bryan and Mr. Wells spoke to me about the *terra* shipped to this point, saying it would cost no more to ship it over here and unload it than it would to keep it in Spokane, and Mr. Webber said he feared he was going to be delayed on the *terra cotta*—pardon me, I meant Mr. Wells. He said when he had built large buildings in the east, where they knew how to build buildings, he assembled the building on a vacant lot and did not start construction until he had all of his material assembled so that he could rush it up in a hurry. Then later in November I again came over and talked with Mr. Wells trying to get some money out of the bank, and he took me down to the place where they were unloading the *terra cotta* and he said,—“Mr. Fosseen, now rush this *terra cotta* here as fast as you can and I will see that it is taken care of, that it is checked, and you can't crowd me too fast; I want the material here as fast as I can possibly get it.” Then in December I had another talk with him. He was complaining severely because we had not shipped a member between the granite and the third floor. He had previously agreed to start on the third floor, to set his *terra cotta*, and again he stepped on me and told me to take a personal interest in the delivery of this mate-

(Testimony of A. G. Fosseen.)

rial because they must have it. Mr. Wells told me himself that as the material was received, it was checked by a representative of the building company. The checking consisted of the placement [631] so that it would be easy to move it to the building tier by tier, or story by story. There was \$20,000 paid on our account by the Building Company on August 13th, I think it was, 1920. None of the material had been shipped to Tacoma at that time. The first material was shipped to Tacoma September 17, 1920, and the last was shipped on the 13th of January, 1921. There was another car loaded and ready to be shipped when we got the telephone notice that the bank had failed, and I immediately summoned Mr. Bryan and told him to go over to the factory and have this car unloaded, that we did not wish to ship any more until the status was known. We also had a telegram on the following day, notifying us to stop.

I had nothing personal to do with the arrangement for the site where this material was placed. Mr. Wells suggested that we get the shipyards. He looked that up and stated it was available and that we could get the use of that shop and that it would not cost us very much more than it would to store it at Spokane or the factory at Clayton. That was the state of the conversation every time I saw him, because he had a bugaboo about failure to deliver on account of car shortage, etc. Mr. Wells visited our plant and inspected the material as it was manufactured. He was over there twice that

(Testimony of A. G. Fosseen.)

I know of, I remember distinctly. I know the signature on this Exhibit 138. It is the signature of Frederick Webber, architect and was received by our company in ordinary course of mail.

Exhibit 138, being letter from Frederick Webber to Washington Brick, Lime & Sewer Pipe Co., dated June 5, 1920, received and offered in evidence.

[632]

Your letter of June 1st received. Mr. Wells will gladly make a visit whenever you need him, to your works, and anything that Mr. Wells and you agree upon will be satisfactory to me.

I am pleased to know that you are going to do the best you can for us, but this is nothing new to me, as you impressed me that way when I first met you.

Yours very truly,

Cross-examination.

(By Mr. OAKLEY.)

This instrument we introduced was absolutely the entire contract. There was something accompanying the contract and attached to it and made a part of it. This is the paper evidently because it went out of our office over the signature of our vice-president. The contract itself is signed by our vice-president and Mr. Lund as secretary. We make it a rule not to vary, have everything in the contract. It says it cannot vary the contract, there in the contract itself.

Exhibit 139, paper shown to witness, offered and received in evidence, as follows (letter, dated Feb-

(Testimony of A. G. Fosseen.)

ruary 19, 1920, from Washington Brick, Lime & Sewer Pipe Company to Frederick Webber):

We propose to furnish the Architectural Terra Cotta for the proposed 16-story Scandinavian-American Bank building for the Scandinavian-American Bank Building Company, which it is proposed to erect at Eleventh Street and Pacific Avenue, Tacoma, Washington, for the sum of One Hundred Nine Thousand (\$109,000) Dollars.

This bid covers the exterior facing shown on the plans as Indiana Limestone from the top of that point shown on the plans as 10 cut hammered granite to top of pent house, four sides of building.

It also includes the part on the alley elevation marked as 10 cut hammered granite, as Ashlar Terra Cotta.

We agree to give you free of charges the services of an experienced Terra Cotta setter and fitter.

This price of \$109,000 is for delivery at building site.

We are in position to make deliveries as outlined by you..

Very truly yours, [633]

I had other conversations with Mr. Wells about shipping this material to Tacoma, and wrote this letter to the Scandinavian-American Bank under date of February 5, 1920. That is my signature.

Letter referred to offered and received in evidence as Exhibit 140, as follows:

We are herewith enclosing statement and invoice in triplicate, for Terra Cotta, both shipped and

(Testimony of A. G. Fosseen.)

ready for shipment. You will note at the bottom of the invoice that we have cancelled all former charges so as to make the records more clear. On the statement we show you a credit on August 13 of \$20,000, leaving a balance due and owing to date of \$12,080.50 and we trust that we may receive a check by return mail.

We are ready to make shipment of the 211½ tons and until we get payment for same or until you are ready to receive it at the building, we will not ship same—until either one of these propositions are completed.

However, if you do pay the \$12,080.50 we will do as we have been doing—ship the Terra Cotta and have it go to Tacoma and be ready for you. You can see that this was not in our contract to rent ground space and unload and reload again, but we did that so as to make certain that the car shortage would not delay the delivery of the Terra Cotta.

Trusting that this is satisfactory to you and that you will send us your check for \$12,080.50 by return mail or else provide room at the building site for the Terra Cotta so that we can complete shipment of materials manufactured, we are,

Very truly yours,

Q. Now, that is under date of November 5, 1920? Now, here is what I call your attention to: “However, if you do pay the \$12,080.50, we will do as we have done, ship the terra cotta and have it go to Tacoma and be ready for you. You can see



(Testimony of A. G. Fosseen.)

that this is not in our contract, to rent ground space, unload and reload and we did that so as to make certain that the car shortage would not delay delivery of terra cotta." Was that the reason for shipping that, to get away from having a car shortage and to avoid a failure in delivery? [634]

A. It was with that idea in view and particularly the fact that Mr. Wells wanted it over there, he was cranky, to have this material all assembled that way before he started construction.

The statement in the letter, Exhibit 140, "We did so to make certain that the car shortage would not delay delivery of the terra cotta," was our own thought, possibly. Getting the material over here would be just a question of service. It was on our way and cost us money to come over here. We rented this ground ourselves and paid rent for it, as stated in this letter. This letter was not written at the suggestion of Mr. Wells or anybody connected with the Building Company. I believe these are the statements referred to in that letter. This estimate of \$22,470, Exhibit 141, was material supposed to be delivered in Tacoma, and terra cotta ready to ship, [635] \$20,304.20. We had been paid \$20,000 on August 13; that \$20,000 was paid for material that was over in our Clayton plant. That was paid August 13th and we did not start shipment until September 17th, almost a month after the money was paid. According to the agreement, if they were not ready to receive this material, they were to pay for it,



(Testimony of A. G. Fosseen.)

so I came over here and they paid me \$20,000. Mr. Wells had been there and saw that we had the terra cotta. We had it piled up on the outside and going to additional expense to do that. We were ready. We had about 400 feet of storage space. We have to have a certain amount of fitting and this was blocking the yard and I didn't have enough room in the yard or in the fitting shed or storage shed so I put it outside with a temporary roof over it, and we were ready and anxious to make delivery, and Mr. Wells wanted delivery. My letter there was to force a payment, if I could, from the Building Company.

Mr. Oakley offers in evidence two sheets accompanying the letter of November 5; received in evidence as Exhibit 141. After the suspension of business by the bank here and the Building Company, and after the Receiver had been appointed for the Building Company, we did not continue work under the contract; as the material was in our way, where certain departments had nothing to do, we would allow a little pressing to go on, or if we had a little extra room in our kiln we would put it in there and burn it; as opportunity was afforded, we continued work, looking toward the completion of the material provided for in this contract. I know of no request for delivery of material after the Receivership.

I remember receiving original of the letter signed by [636] Mr. Kelley, dated August 6,

(Testimony of A. G. Fosseen.)

1921, to the Washington Brick, Lime & Sewer Pipe Co.

Whereupon said letter was received in evidence as Exhibit 142, as follows:

After the conference we have had with you with reference to the furnishing of the terra cotta manufactured by you for use in the erection of the Scandinavian-American Building Company's building at Tacoma, Washington; it seems to be impossible to arrive at a satisfactory arrangement for using the terra cotta in the building. You are taking the position that you are the owners of the terra cotta and at the same time pursuing your lien claim against the building for the terra cotta.

We will, therefore, require you to elect whether or not you will deliver this material, for which you claim your lien, to the Receiver without any restrictions on your part, or to dismiss your lien claim and retain possession of your terra cotta.

Will you kindly notify us within the next few days of your decision in this matter so that we may be guided accordingly.

Yours very truly,

This matter was taken up and discussed with our attorneys and other members of the company. I was present at Mr. Haskell's office, the office of the Receiver of this company. Mr. Oakley, Mr. Lund, Mr. Davis and Mr. Kelley were present, present when the conversation referred to in this letter took place at Mr. Haskell's office. I don't

(Testimony of A. G. Fosseen.)

think we refused to recognize the right of the Receiver to have possession of this terra cotta. I don't know that I had to demand or to request. I felt all the time that it was up to the Court's decision. We wanted to have our rights, but we didn't know what our rights were, and we felt it was up to the Court to say what our rights were.

Q. And you would not let the terra cotta out of your possession until the Court determined your rights? A. No. [637]

Q. Didn't you tell Mr. Haskell that you would not consent to that?

A. No, I did not tell him that.

Q. Or Mr. Kelly?

A. I did not tell Mr. Kelly that.

I don't know if I made any response to this letter; possibly you have it in your records. We came to an agreement that we could not see our way clear to offer a proposition that would be acceptable to the gentlemen, and if you had one, we would be willing to consider it. I do not believe I ever made the statement that we would not consent to taking this terra cotta and placing it in place on the building, because I don't know what control I had over it. I felt it was in the Court's possession. I didn't know what to do with it. I thought the Court was going to make an adjudication. I cannot say what I did with reference to this communication of August 6. I don't know whether [638] I have a record of any

(Testimony of A. G. Fosseen.)

letter to our attorneys, Davis & Neal. I have not gone through the letters.

Redirect Examination.

(By Mr. LUND.)

I had been talking with Mr. Haskell as Receiver, or rather as Bank Supervisor, about using the money in the bank or getting authority to do it, to put up this terra cotta. With reference to his statement about asking this State Court for authority to use the bank money to put up this terra cotta, I question whether he said the state Court, but he said it looked good to him; the more he looked at it, the better it looked, and he said he talked to different men around town, and he would see the Court, and afterwards he told me that he had seen the Court and he had put up the proposition to the Court and that he thought he could possibly do business. There was no claim by me of title to this material here in Tacoma. I never claimed title to it after it was shipped over here. Mr. Haskell wanted us to ship the balance of the material, pay the expenses of shipping it over here, putting it on the ground and taking a chance whether we ever got any money out of it or not. We figured out it would cost about \$12,000 to finish up the rest of the material and he wanted us to ship that over and then he told me that he was going to substantiate this lien—this mortgage. If he substantiated this \$600,000 mortgage, our lien would be out, and I said inasmuch as the Court has jurisdiction, we would

(Testimony of A. G. Fosseen.)

have to abide by its decision and await the outcome of that. I could not move. At the same time he told me he was going to contest our lien on the building. He wanted us to go to the expense of \$12,000 or \$15,000 to get the material over here, but he was willing to pay the money. He [639] was going to get authority to pay for the actual expenses of the manufacturing of the rest of the material and the freight. In that conversation I think he did say that he was going to contest our right to lien on this building for the material that was here. This matter of the \$600,000 mortgage was referred to sometime in the early fall. Not the first time we were having these conversations with him with reference to the terra cotta, but at the time Mr. Kelley was present, when Mr. Kelley, Mr. Oakley and Mr. Haskell were together. He may possibly, at that time, have stated that the Bank Supervisor had purchased \$70,000 and was asserting that as the lien, but I was more interested in the \$600,000 mortgage because I felt that the lien owners would be amply protected, that there would be enough money to take care of them even if the \$70,000 mortgage went ahead, but I knew that if the \$600,000 went ahead of the lien, we would be out.

Cross-examination.

(By Mr. HOLT.)

We were paid \$20,000 by the Building Company for terra cotta. As to whether it was a payment for any particular terra cotta, or on general ac-



(Testimony of A. G. Fosseen.)

counts—they were not to pay for that terra cotta or any terra cotta at all until a certain amount was finished and ready for shipment. A certain amount was finished and ready for shipment when we were paid. There was more than \$20,000 worth. I don't know where that terra cotta is. I don't know what became of the terra cotta that was completed, finished and ready for delivery at the time that the \$20,000 was paid. Part of it is the terra cotta here in Tacoma, and probably a part of it is over there yet. I don't know what part of it is still over there at Spokane. I know that it is a part of the terra cotta that is in Tacoma that was collected on. In August terra cotta [640] was made and ready for shipment to the amount of more than \$20,000; we were paid \$20,000.

By Mr. LUND.—This contract was an entire contract for a certain quantity of material, and it is apparent on the face of it that this \$20,000 was paid on account. There is no other claim than that being asserted; under the law it will be treated as the payment on that which was not secured, and lienable against that which is lienable.

By Mr. HOLT.—I understood the witness to say that this \$20,000 was to pay any demand for certain material which had been manufactured.

By Mr. LUND.—Oh, no, no.

By Mr. HOLT.—If that is true, I want to know whether that is the stuff that is here in Tacoma. Now, if it is conceded that this was simply a payment on general account and that it was no

(Testimony of A. G. Fosseen.)

obligation at any time, why, that is another matter.

By Mr. LUND.—That is the fact; I agree that is the fact and it may be stipulated into the record that it was paid on general account and we have applied it on some nonlienable items we have put in there.

Cross-examination (Continued).

(By Mr. HOLT.)

With reference to the Receiver's right to go down and take this stuff from its present location in the City of [641] Tacoma, I thought it was in the Court's hands and I had nothing further to do with it. I could not say anything. I could not have refused, because I did not have the power to refuse. I simply say it was for the Court to say whom it belonged to. I did not claim it; did not deny it; simply said it was for the Court to decide, that was my position. I believed I had no control over it, I could not refuse anything.

Cross-examination.

(By Mr. OAKLEY.)

This statement of August 11 is our statement to the Scandinavian-American Building Co.—statement of the terra cotta under date of August 14, \$26,666.67. You understand we did not consider that as a credit by any means, because it is impossible to segregate terra cotta into certain pieces as you can other clay products or other materials. It is like fabricating steel; you cannot do it, that is, a true estimate of what you think there is there. I cannot tell by this letter

(Testimony of A. G. Fosseen.)  
 whether that material was shipped to Tacoma or not. Our other man that was here possibly might, I don't know. I don't see how he could. He does not know what that money was paid for.

Statement of August 11, 1920, offered and received in evidence as Exhibit 143, as follows:

**Exhibit No. 143.**

WASHINGTON BRICK, LIME & SEWER PIPE COMPANY.

In Account With

SCANDINAVIAN-AMERICAN BUILDING COMPANY.

All Terra Cotta of main shaft of building from third story window head to eleventh office floor, burned and being fitted, sills for complete job are finished.

|  |             |
|--|-------------|
| Terra cotta fitted and ready for shipment; |             |
| 140 tons at \$101.00 per ton .....         | \$14,140.00 |
| Terra Cotta burned and being fitted; 160   |             |
| tons at \$96.00 per ton .....              | \$15,360.00 |
|  | <hr/>       |
| Total .....                                | \$29,500.00 |

[642]

|                                       |             |
|---------------------------------------|-------------|
| As per terms of contract in Article V |             |
| 75% of \$29,500.00 .....              | \$22,125.00 |

This statement is simply an estimate of the amount of work we had done on that job up to that time, as near as I can remember.

Cross-examination.

(By Mr. GRIGGS.)

I say that I have taken the position in reference

(Testimony of A. G. Fosseen.)

to this terra cotta over here, that it was for the Court to say what should be done with it. I think I maintained that all [643] the time to Mr. Haskell. I had nothing to do with it. I told that Mr. Haskell and Mr. Kelley and all the others who discussed the matter with me. I felt this way, that up to the time we would allow them to move—however, I couldn't say that I would or would not, but I felt that if they paid the money for it, we would be willing to have them move it, take the terra cotta and even furnish that over at the factory, going to the extra expense, if they paid all the money. I had no power over it unless they complied with the terms of the contract. All of this material was stored right here at the end of the Great Northern Railroad warehouse. Mr. Wells had the privilege of moving it without an order from me. The terra cotta was over there at his disposal at any time without any payment, without any reservation whatsoever.

Cross-examination.

(By Mr. METZGER.)

We were liable to pay for the loading of it, the transportation of it from the storage yard to the building. We would allow the cost of delivery from the storage yard to the building here at Eleventh and Pacific as a deduction, certainly, or pay for it whatever way they wanted.

Redirect Examination.

(By Mr. LUND.)

Mr. Wells or I had authority to direct the move-

(Testimony of A. G. Fosseen.)

ment of that material to the building. He was over here and we had a representative here and he was absolutely in charge of the movement of that material from that place. It was over here for his convenience and for the bank's. He did not require any authority from us whatsoever to do so.

Recross-examination.

(By Mr. OAKLEY.)

Mr. Wells did not move any of that material to my knowledge. They were not ready for it. We were ready to move it [644] any day and the building was not ready and they had no place to ship it, and we shipped it in here at the extra expense and everything else for their convenience, ready to put it on the ground. We hired space and we had a dray ready to move it to them any time they would demand, but they were demanding that we ship the material, and when we shipped the material they did not have space for it, and then, to make this a real job, make quick delivery, we went to the extra expense of paying for unloading, which is extra, and rented a lot, which is a very small amount.



**Testimony of Willis E. Clark, for Washington  
Brick, Lime & Sewer Pipe Company.**

WILLIS E. CLARK, a witness called on behalf of the Washington Brick, Lime & Sewer Pipe Co., testified as follows:

Direct Examination.

(By Mr. LUND.)

I am the coast representative of the Washington Brick, Lime & Sewer Pipe Co. and have been coast representative a little over two years; was such at the time of the contract with the Scandinavian-American Building Co. and was present with Mr. Fosseen when he had an interview with Mr. Larson and Mr. Drury of Tacoma, and something was said about payment for the material and delivery of the material. That was on November 10, 1920, in Mr. Larson's office in the Argonne Building in Tacoma. Mr. Fosseen at that time was asking for additional payments on this contract and Mr. Larson and Mr. Drury stated that they had considered the matter of making additional payments but had decided that they were not able to do so at that time because those sets of terra cotta, some of those sets then in Tacoma were then incomplete and they felt that the incomplete sets should be completed before they made additional payments. I don't recall that they said anything as to the number of sets that were involved. They said [645] that Mr. Wells had reported to them that the sets in question were incomplete; that was in substance what occurred at that time.

(Testimony of Willis E. Clark.)

I was instructed by Mr. Fosseen that it was desirable to make arrangements to handle the terra cotta in Tacoma and that he had had some conversation with Mr. Kellogg, a transfer man, and came to Tacoma and got in touch with Mr. Kellogg and found that he had in mind using a shipyard or a place which had been a shipyard, and Mr. Kellogg secured from the owner a rental proposition with the offer to lease it to us, and Mr. Kellogg also made an offer for handling the material and got in touch with Mr. Fritch of the Local & Long Distance Transfer & Storage Co. and he suggested that the material might be stored in the Great Northern freight sheds as they had a lot of unused room. I took the matter up with the local agent of the Great Northern, Mr. Van Sant, over the telephone, and he stated it was impossible, under the rules governing the railroad, to allow us to use the freight shed; that we could have the use of the vacant ground at the end of the freight shed. After confirming this, I took it up with Mr. Costello, an official of the Great Northern in Seattle and made tentative arrangements with these gentlemen to use it; that is, obtained their permission to use this land, and we received a further offer from Mr. Fritch for handling the terra cotta. That appeared to me more advantageous than the other. I told him we would accept it subject to Mr. Wells' approval. By handling, I mean unloading the cars and piling the terra cotta, and that part of it which could not be delivered promptly to the building, that part of it which they

(Testimony of Willis E. Clark.)

could not receive. I then reported it to Mr. [646] Wells, explaining to him that negotiations had taken place, and asked him if the conclusion of such an arrangement would be satisfactory to him and entirely in accordance with his desires. He stated it would be so and then I made arrangements with the Transfer Company and filed a formal application with the railroad company for the space and they permitted us to use it. I told Mr. Wells of our instructions to Mr. Fritch and that our written memorandum of agreement with Mr. Fritch stipulated he was to deliver the material at the building to Mr. Wells at any time, any material that he might call for. That is substantially all that occurred with reference to it.

Mr. Wells had a man on the ground checking some of the material as it came from the cars. I cannot say when that was, definitely. Mr. Wells had a check according to my memorandum on Great Northern car #208,343. It was being unloaded on December 3d. It may not have been completed or started on that date, but it was being unloaded on that date. I cannot state whether that system applied to all cars shipped subsequent to that time. I was not on the ground, but I do know that he was there, had a man there at the time this car was in.

Cross-examination.

(By Mr. OAKLEY.)

When I said he had somebody there to check the car, I meant he was checking the sheets that were furnished by the factory. These sheets show the

(Testimony of Willis E. Clark.)

numbers corresponding to the parts or the pieces of material. I don't know the man's name who is doing the checking. It was an employee of Mr. Wells or someone acting under his orders. I don't know whether that was the first car that was inspected. I didn't make any note of any other. With reference to this car, a question arose about the misunderstanding between Mr. Wells and Mr. [647] Fritch as to the time they were to start unloading, and it was called to my attention. Mr. Fritch was a transfer man. This question arose with reference to the time they started unloading this car. My impression is that Mr. Fritch told me he had reported to Mr. Wells he would start unloading the car on the morning of December 31st at eight o'clock, and Mr. Wells did not so understand; consequently the inspector did not reach the car until perhaps nine o'clock or a little later in the morning. That is what caused me to make that note. My understanding is the inspector got there about nine o'clock. Several cars had been shipped prior to that date; I could not state how many. I do not know whether the inspection had been made. I was not there. The unloading of it was entirely in the hands of Mr. Fritch. He was there. I was there sometimes when they were unloading, not when this occurred which I speak of. I heard of it from Mr. Fritch, Mr. Wells and Mr. Glazier. Mr. Wells checked some of the material. Mr. Wells and Mr. Glazier and Mr. Fritch each reported, each told me he had a checker on the ground who checked some of the material. I don't know of

(Testimony of Albert Glazier.)

objections by Mr. Wells with reference to the orders of this terra cotta. I never heard of it so far as I can recall.

**Testimony of Albert Glazier, for Washington Brick,  
Lime & Sewer Pipe Company.**

ALBERT GLAZIER, a witness called on behalf of the Washington Brick, Lime & Sewer Pipe Co. testified as follows:

Direct Examination.

(By Mr. LUND.)

I am sixty-one years old; have been in terra cotta business for forty-two years; served my time in the business from the ground up, partly in Switzerland and in Boston, Mass.; have been engaged in the manufacture of terra cotta as foreman of the shops and in most of them out here in this Western [648] country, working for different companies; sixteen years in Washington for the Washington Brick & Lime. I live now in Seattle. I had connections with their company last year but am not now employed by them. I am familiar with terra cotta, the way it is made and handled.

With reference to receiving the terra cotta to be used by the Scandinavian-American Building Co., I received checking lists from the transfer company and checked off the material as it arrived here in the yard. Each of those sheets had a letter; the first set was numbered "A"-1 and from there on, up to whatever the number was. There was twenty-seven pieces in that set, and "A"-2 would run from



(Testimony of Albert Glazier.)

there up and would end with 48 or 52 according to the number of pieces in the courses that was on the checking list. I checked off the number of pieces unloaded in the car, and also noted the broken pieces in the car and made a return of it and sent that back to be replaced, to the factory. At the time I received the checking lists there was a duplicate set and one set went to Mr. Wells and the other I kept. Only once or twice Mr. Wells came down and watching, found a piece that did not suit him I made a note of it and had it replaced. There was nobody else to my knowledge besides Mr. Wells, down there at any time, looking at this material. After the car was unloaded, I went up with my checking list to Mr. Wells. Sometimes I went and took a memorandum with me and Mr. Wells' clerk and myself went over a blue-print there and we checked off what was on hand then at the time. He went through their list and he marked it on his; sometimes he used his own checking list and sometimes he used mine, and he marked off the drawings as we went along. [649]

I have made a check of the material that is down here in the yard and I have a list of it here, these papers marked Exhibit 144. This "A," first set of "A" runs from "A"-1 to "A"-54. That set is complete down in the yard except 48 and that piece was broken in the car. I sent a memorandum to the factory for it to be replaced. On set "A"-2 that set also runs to 54 but it is complete. The broken one is not down there. All the other pieces where

(Testimony of Albert Glazier.)

this line runs through is complete. I started on this check of the materials shown on the list on the eighteenth of February and finished it on the twenty-fourth, 1921. There were a couple of piles I repiled down there; put them near the road for better security. The material is piled in rows, designated by letter. A is by itself; B is by itself but not in the numbers as it goes in the building. In the delivery to the building I would take care of that though. The list which I speak of as going with each car was upon such a form as indicated by Exhibit 144. They are printed and made especially for that purpose but in duplicate. One was delivered to Mr. Wells and was a carbon copy of this.

Whereupon said checking sheets were received in evidence and marked Exhibit 144.

I kept a memorandum from time to time of the material that was broken in the cars or that was off color. One time Mr. Wells was down there and found a miter that was a little off color and I made a memorandum of it and it was replaced. I have it here in this book. This book which has been marked Exhibit 145 shows that on September 25 the first car of order 584, Great Northern #121,626. The weight was 65,820. The broken pieces in the car marked as they are on the drawing [650] here and received replacement O. K., and I checked them off as they sent the replacements, after I received the replacements. Here are some I have not received the replacements. The next car was Octo-

(Testimony of Albert Glazier.)

ber 1—the second car, M. K. & T. There were four broken pieces in this car and Mr. Clark O. K.'d them. I had to take it down and show him the pieces. They are lying down there yet. There are little checks after three of these pieces; the fourth I have not received yet; that little check mark indicates that the material was replaced later and is on the ground. That applies to all of the thirteen. That is all I went through. These are not replaced (indicating). Here is a miter that Mr. Wells found off color and that is replaced, "85-C"; this is my check mark. This here is not replaced (indicating).

Whereupon memorandum-book was offered and received in evidence, as Exhibit 145.

With reference to these Exhibits 146 and 147:

In repiling the terra cotta, making my last check, I took three piles. One of them was hanging a little on account of the soft ground. I knew how Mr. Wells was about things. Any cracked pieces, or looking a little cracked or off color I set them to one side and made a list and wrote Mr. Bryan in the shop that in repiling the terra cotta we found pieces that had heavy cool cracks where they were cracked. I set those pieces aside so that they could be replaced by the time Mr. Wells wanted them on the building. These are the broken pieces I have sent to the factory and have not received replacements up to date. That was Exhibit 147. This was made by me between February 18th and 21st at the time I made the general check. Mr. Wells did

(Testimony of Albert Glazier.)

come down there [651] very often when I was checking this material. He came four times to my knowledge.

Cross-examination.

(By Mr. OAKLEY.)

With reference to anybody being there during the unloading of cars, representing Mr. Wells, the clerk of Mr. Wells was down there while I was in Seattle, when a car arrived in Tacoma here and I was at another building in Seattle.

Referring to sheet 3 of this exhibit, that shows "17-A" pieces of material there are those you see marked off; 20 was missing and from 21 up to 40 all missing. There are supposed to be 45 pieces in "21-A," only 9 delivered; "27-A" there are 45 pieces and only 8 delivered. That "27-A" represents one course. The material in "26-A" would not in this case fit in with "27-A." It was the same with "28-A"; there are 45 pieces in that and only some 7 in those 45 delivered. The rest were loaded in the car at Clayton but were not delivered here. They unloaded them again at Clayton. I made this check in February; they were loaded in January. This check was done after everything was over, just for the sake of knowing what was on the ground for sure. The material over there don't look bad. Mr. Wells took one out that was partly discolored and I replaced it and if I had seen any more I would have done it. I came across several pieces in repiling. As a general thing colors were even. Six or seven pieces of them were discolored. The rest of them have a little corner broken off or

(Testimony of Albert Glazier.)

something, and Mr. Wells refused to take anything that was checked. These rejected pieces are lying in front of the piles down there, thrown out as useless. [652]

**Testimony of M. L. Bryan, for Washington Brick,  
Lime & Sewer Pipe Company (Recalled).**

M. L. BRYAN, being recalled on behalf of the Washington Brick, Lime & Sewer Pipe Co., testified as follows:

Direct Examination.

(By Mr. LUND.)

With reference to the practice of terra cotta manufacturers in making what is called "overs" in connection with the job, in the manufacture of commercial material, every piece that comes out is not perfect. It is necessary that we make, according to the kind of ware to be made, a certain percentage of overs to take care of losses that occur in the burning process. If there are 500 pieces, we make 2% overs, there will be 10 pieces over. If there would be 4 pieces, we would make 1 piece over, which would be 25% overs. We always make a certain percentage to take care of losses. They are extra pieces of the same character as the ones to be shipped, and the purpose is to take care of breakage in transit and any other defect. That was our practice in this instance. When we received a notice from Mr. Glazier about the broken pieces, we furnished overs for that particular section, those pieces that Mr. Glazier ordered, that is,



(Testimony of M. L. Bryan.)

as near as it was possible to do so. We have at the plant now all of the ones we could not supply from the overs; there were some cases where the breakage on certain classes of stuff was more than our overs so that we had to remake a few to take care of that replacement. We remade the material that Mr. Glazier reported was broken or defective, according to his report. After receiving Mr. Glazier's check here of the material at Tacoma, we compared that check with the blue-print showing our material; there were very few changes necessary to be made. Some points have needed a little bit of checking here and there; we made our blue-print conform to [653] the check so that the blue-print introduced in evidence shows the material according to Mr. Glazier's recheck in February. There are certain parts of the building where the material is interchangeable; that is, the material could be taken from one course and put into another. There are certain typical floors, for instance, material contained in the E, F, G, H, I, J and K, setting letters. I think from E to possibly M, I forget just exactly about it, are in typical stories. I can identify it on the key plan, same height and same width of opening and it is all made from one drawing, all made in the same molds; the fact is, the molds are all lettered as the E and F sections, which are typical floors.

*Recross-examination.*

(By Mr. OAKLEY.)

As I remember, these went into the building

(Testimony of M. L. Bryan.)

starting at the third story and belt course above that. It is the same as a layer cake, one on top of the other. They are fitted for that place. The drawing is simply for identification, that is all, to see that all the pieces are there. I do not know whether our people checked them out here as they were taken out of the car. They were checked in Spokane into the car. We had a complete check then of everything over there and that check list was forwarded to Tacoma after the car was shipped, to be checked out against the list that we checked them in on. I have not got those lists here. I have made up a memorandum as requested, showing or explaining the key plan.

Whereupon the explanation of the key plan was received in evidence as Exhibit 148. [654]

**Exhibit No. 148.**

EXHIBIT No. 130.

TERRA COTTA

LEGEND.

|                       |                                    |
|-----------------------|------------------------------------|
| Sections colored Red, | Material at Tacoma, G. N. Ry. Yard |
| “ “ Yellow,           | “ fitted ready to ship             |
| “ “ Brown,            | “ burned, not fitted               |
| “ uncolored           | “ in various stages of making      |

Status of Terra Cotta Manufacture on Jan. 17th and values at the various stages of making.

|                                   |             | Stage of completion |           |        |
|-----------------------------------|-------------|---------------------|-----------|--------|
| Moulds to be made, Drafting done  | 252 cu. ft. | 3%                  | \$34.02)  |        |
| “ made, but not pressed           | 1266 “ “    | 23%                 | 1,310.31) | Un-    |
|                                   |             |                     |           | col-   |
|                                   |             |                     |           | ored   |
| Pressed & Dried ready for glazing | 1787 “ “    | 70%                 | 5,629.05) |        |
| Fitting Dept. (Unfitted)          | 2500 “ “    | 92%                 | 10,350.00 | Brown  |
| “ “ (Fitted)                      | 5340 “ “    | 97%                 | 23,309.10 | Yellow |
| Material in G. N. Ry. Yard        | 13035 “ “   |                     | 58,657.50 | Red    |
| Total cubic feet                  | 24180 “ “   |                     |           |        |

Case No. —. United States District Court, Western District of Washington. Defendant's Exhibit No. 148. Adm. Oct. 21. Lund. [655]

**Testimony of A. B. Fosseen, for Washington Brick, Lime & Sewer Pipe Company (Recalled).**

A. B. FOSSEEN, being recalled on behalf of the Washington Brick, Lime & Sewer Pipe Co., testified as follows:

Direct Examination.

(By Mr. LUND.)

With reference to the conversation with Mr. Larson and Mr. Drury at the Tacoma office in November, 1920; I wrote a letter and followed it up by a personal visit regarding collections, and I met Mr. Larson and Mr. Drury in the office in the old Scandinavian-American Bank Building where they were, and told them my position, and they said they would not pay any more money until they had received the terra cotta, starting from the granite base. I said, "Well, when that is finished, will you pay that and pay the rest when it arrives?" Mr. Drury said, "Yes, we will" and Mr. Larson acquiesced.

**Testimony of Forbes P. Haskell, Jr., for Washington Brick, Lime & Sewer Pipe Company.**

FORBES P. HASKELL, Jr., being called by the Receiver in the matter of the Washington Brick, Lime & Sewer Pipe Company's claim, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I am the Receiver for the Scandinavian-American

(Testimony of Forbes P. Haskell, Jr.)

Building Co. I remember a conversation with Mr. Fosseen and his attorneys with reference to the delivery to me as Receiver of the terra cotta involved in this contract that is now before the Court. That was in my office. Mr. Fosseen, at an early date, had consulted me about putting this terra cotta in the building, and gave me this reason that he thought it would help protect the steel, and it would be a great advertisement for his company to have it in the building. So sometime in July or August, I notified Mr. Fosseen I had decided to put the terra cotta in the building, if he was [656] willing to let me take it on the grounds that I had suggested to him, and he came over from Spokane and came to my office with two of his attorneys. I discussed the matter quite at length with them but told Mr. Fosseen that I had decided it would be wise to have the terra cotta in the building providing he was willing to take it under a stipulation that his position in the matter would not be changed, and the discussion fully brought out the fact that Mr. Fosseen and his attorneys had considerable doubt, or had some doubt at least, that their claim would be established on account of the material not having been delivered on the ground or to the Building Company; and after considerable discussion, Mr. Fosseen told me that he would have to refuse to let me have the terra cotta put into the building.

Cross-examination.

(By Mr. LUND.)

I had not, as you know, authority from the Court

(Testimony of Forbes P. Haskell, Jr.)

to put this material into the building. I do not know whether I stated that I had a plan on whereby I was going to use the money in the bank to put this terra cotta up. I presume I wrote Mr. Fosseen, as Receiver of the bank, or as Bank Supervisor, and told him I wanted to talk with him about it. I do not remember particularly, but may have stated in this conversation that I was going to assert a claim of lien under the \$600,000 mortgage, commonly known as the Simpson mortgage. I do not remember that came in; don't think I stated I was going to contest any right of lien of this company. I don't think that I stated that. Don't remember my attorneys stating it, think not. I think my attorneys made the statement at that time that they did not think there was any question but that his lien would stick, something [657] on the basis of the lien being good as to the material unloaded here. I do not remember just how far the conversation went. I don't think they stated in that conversation that before anything could be done with reference to the matter, we would have to get the consent of the other lien holders. Of course we had to get permission of the court to do it. I don't think they said the matter was so involved and complicated that it was impossible to try to deal with the matter, and that it had to be settled by the Court. The matter of the material in Tacoma and the right to lien on it was discussed. Some thought there might be some question and some thought they did not know whether there would be or



(Testimony of Forbes P. Haskell, Jr.)

not. I did not ask Mr. Fosseen if he had any objection to my using the material that was stored here in Tacoma, I was talking about all of the material at Tacoma and at Spokane and all of the material that had to be manufactured. I think I asked Mr. Fosseen if he would expect me to pay the freight on the material over here, and also paying for the manufacture of the original material that had not been finished. As Supervisor of Banking I wrote the letter to Mr. Fosseen, shown me marked Exhibit 149.

Whereupon letter was received in evidence as Exhibit 149, as follows:

I have been giving the matter which you talked to me about a great deal of consideration the last few days. There are one or two questions that have been raised which I would like to be clear on.

If you ship terra cotta here and it is put in the building, will you please advise me what your course will be, whether you expect to file a claim against the receiver or whether you would want to file a lien against the building.

I wish you would also advise me what the approximate amount of the freight would be on the balance of the tile that is at your plant. [658]

I am going into this matter very thoroughly and on every turn I find the suggestion meets with general approval and it is my hope that before very long the way will be revealed to carry out your suggestion.

Very truly yours,

I remember receiving this letter of March 15,

(Testimony of Forbes P. Haskell, Jr.)

1921, I think that is the letter. It was a long time ago.

Whereupon letter of March 15, 1921, Fosseen to Banking Supervisor, was received in evidence as Exhibit 150, as follows:

Your letter of the 12th received and in response to same will say that I am very glad to note that you are seriously considering the suggestion of enclosing the Scandinavian American Bank Building in the near future.

In answer to the questions which you submit, that is, if we ship the Terra Cotta manufactured and at our plant, would we expect to file a claim against the Receiver or would we file a lien against the building, will say it is not our intention to make any claim against you as Receiver.

We, of course, would expect to retain and not in any way prejudice such rights as we already have whether by way of lien or otherwise.

The proposition is this—we will ship the Terra Cotta already manufactured and at our plant, on condition that you pay the freight and other incidental expenses, so that there will not be any outlay on our part.

You may also use the material already in Tacoma paying haulage charges to the building.

We will manufacture the remainder of the Terra Cotta necessary to complete the building on condition that you pay for the manufacturing, fitting, packing, freight and haulage.

(Testimony of Forbes P. Haskell, Jr.)

Our Superintendent estimates these charges as follows: Freight on Terra Cotta manufactured \$3000.00 and \$2000.00 additional to haul it from cars to the building. It will cost approximately \$7000.00 to manufacture, fit and pack the remainder of the Terra Cotta to complete the building.

Under this plan the Terra Cotta would cost you about \$12000.00 and if the lien of your mortgage is held superior to our lien, you are in better position. In the event our lien is held prior, you will no doubt wish to protect the bank's investment and the building properly incased would be a much greater asset.

Moreover, by so doing, you will be preserving the materials on hand, or specially manufactured for the building and protecting the steel frame which is subject to corrosion and rust. [659]

From every viewpoint it would seem to be good business on your part.

It is not our purpose to obtain any added advantage, but protect the interests of all concerned until such time as the courts may determine the rights of the parties. In the meanwhile, the building will be put in safe condition at a minimum cost and producing a revenue.

Unless some plan of settlement is worked out, it is apparent the litigation will be long drawn out before the rights of all parties is judicially determined. If some such plan as I have suggested is not adopted and carried out, whichever party succeeds will have won a barren victory.

When a time comes that you will be interested in

(Testimony of Forbes P. Haskell, Jr.)  
an effort to effect a settlement, we will be glad to consider a cash proposition for our claim.

I am firmly convinced that the right thing to do is to enclose the building and our company stands ready to assist in accomplishing this end. We cannot, however, afford to make any further expenditures and I am sure you would not think it good business for us to do so under the conditions.

We trust this makes our position clear and answers your questions and, if not, will be glad to hear from you further.

Yours very truly,

In these negotiations I have forgotten whether I was acting as Receiver of the Building Company or Supervisor of the Bank. I was appointed Receiver. It was after the time I was appointed Supervisor of the Bank and prior to the time [660] I was appointed Receiver of the Building Company; I don't remember when I was appointed Receiver.

Redirect Examination.

(By Mr. OAKLEY.)

The conversation I spoke of in which Mr. Fosseen refused to permit us to take the terra cotta was at a different date from those letters. It was the latter part of the summer I should imagine it was some time in August.

**Testimony of D. L. Glenn, for the Receiver.**

D. L. GLENN, being called as a witness by the Receiver, having heretofore been duly sworn, testified as follows:

## Direct Examination.

(By Mr. OAKLEY.)

I am Assistant Superintendent (of the Building Company). I made an examination of the terra cotta here in Tacoma on quite a number of occasions while the material was being delivered by car to the flats. There was not sufficient terra cotta at any time to make a satisfactory start on the building, so many of the courses were incomplete, so many of the sets; we had contemplated putting in a swinging scaffold entirely around the building to work on. To complete the building at the earliest possible date we intended to start as soon as the steel was riveted and they were out of our way. Within ten days I made an examination of the terra cotta over here in the yard at Tacoma; that is, just superficially. It was all piled up so closely you could not get through it and make an exact examination. From time to time I have made an examination of it. There were quite a number of pieces that are off color. I made that examination for Mr. Wells when this report was written.

## Cross-examination.

(By Mr. LUND.)

With reference to selecting out pieces that were



(Testimony of D. L. Glenn.)

off color, separating them, it is not my business to select out [661] the pieces. We just warned the parties at the time and pointed out the pieces, not by number, to Mr. Glazier. I don't know whether those pieces were replaced. I was over at Spokane last week; went up to the plant at Clayton and examined the terra cotta there. I found it in better condition than the terra cotta is here; very good shape. With reference to the terra cotta here having been exposed to the weather and soot getting on it, I can see through the dust and soot. I would not make an estimate of how many pieces are off color over here, an exact estimate, until I would go through it all.

**Testimony of Robert M. Davis, for Washington Brick, Lime & Sewer Pipe Company.**

ROBERT M. DAVIS, witness called by Washington Brick, Lime & Sewer Pipe Co., testified as follows:

Direct Examination.

(By Mr. LUND.)

I reside at Tacoma and am counsel for the Washington Brick, Lime & Sewer Pipe Co. in this matter. I heard the testimony of Mr. Haskell on last Friday and was present at the conference to which he referred. There was no claim of title made at that time by Mr. Fosseen, President of the Washington Brick, Lime & Sewer Pipe Co. as to the material that has been shipped to Tacoma. Mr. Haskell desired to know whether Mr. Fosseen was

(Testimony of Robert M. Davis.)

going to ship that material over here and Mr. Fosseen replied, and I replied also, that there was a question being raised as to the validity of the lien on the material at Spokane, and that there were other parties raising the question. Mr. Oakley, I think it was, stated that they would not raise the question at that time. I said I understood that was true but that there were other cross-complainants that were disputing and would dispute the validity of the lien on the material at Spokane, and that we did not want to be left in a position of having moved the material over [662] here in the middle of the summer, long after the suit was started, and then have the lien defeated; that he was simply desiring to stand on his rights as they were fixed at the time, and that if arrangements could be arrived at by which we would have no greater or any less rights than we had at that time, Mr. Fosseen was perfectly willing to do it, but there could not be any stipulation arrived at which would bind the other cross-complainants or the other parties to the case. It was agreed by all of us that to obtain the consent of all the parties to the case was practically impossible at that date. Mr. Haskell said he was simply working on a plan—it was more or less tentative at that time, as to whether he could get an order of the Court authorizing the expenditure of the money for the erection of the terra cotta. I don't remember particularly what was said about finishing the material that was then in an unfinished state. I think that would have to be done in order to use the terra cotta that

(Testimony of Robert M. Davis.)

was finished—some slight work that would have to be done. The material that had been shipped to Tacoma was out of the question, practically, no question about the validity of that lien; nothing said by Mr. Haskell or his counsel questioning the right to the lien for that material; Mr. Kelley and I think Mr. Oakley also expressed themselves, stating that they had no question about it in anyone's mind at all. There was no claim made at that time by Mr. Haskell or his counsel that this material here had not been delivered or that they did not have control over it. That was not discussed.

Cross-examination.

(By Mr. OAKLEY.)

With reference to the question of discoloration, cracking, [663] chipping of the material, you state you had been told by somebody there was some discoloration and some cracked material over there but you had not seen it. After the meeting adjourned, Mr. Fosseen and an attorney from Yakima agreed to give you a definite answer as to what we would consent to do with reference to the terra cotta, provided anything could be worked out by which our rights would not be jeopardized. We were willing to deliver, if it could be so arranged that whatever rights we then had would be protected, and brought into court here, and if we had no rights, we did not want to relinquish the terra cotta. I said it would be taken up with the Spokane office. We saw no practical way of working it out by which a stipulation could be arrived at from all the

(Testimony of Robert M. Davis.)

parties, that would save the situation; nothing could be done to change it. We were not in a position of not wanting to part with the terra cotta until the court had decided as to the merits of the case. I had a letter from Mr. Kelley just a little while after this conversation, with reference to the waiving of our rights of lien or delivering the terra cotta. I communicated with my client with reference to the letter. We could not see our way to work out the scheme by which the situation would be saved and our rights would be preserved under just such conditions as they were then. It was not a question of our wanting to retain possession of the terra cotta while we had it, or retaining title. It was a question of relinquishing rights as they then stood. Mr. Haskell was in the position of wanting us to change our position, yet face a contest by him and all these other cross-complainants disputing we had any rights at that time. He wanted to incorporate the [664] terra cotta in the building without giving us any further security than they had. We were still maintaining it would take the court to determine what our rights were at the time the lien was filed, and we saw nothing we could do which would add to or detract from our rights at that time. You and Mr. Kelley and myself all agreed at that time it was impracticable to get a stipulation from all the parties in the lien, particularly preserving whatever rights we had at that time. Mr. Haskell was asking us to be in the position of finishing up whatever work remained to be finished, and sending the

(Testimony of Robert M. Davis.)

stuff over here and then face an attack both by him as Receiver of the Bank and Receiver of the Building Company and by other claimants who deny we ever had any rights. This whole proposition originated some time before that conference; I don't know how it originated. I was not present. I had nothing to do with the letter, Exhibit 150. I didn't know anything about it for months.

Redirect Examination.

(By Mr. LUND.)

When I spoke of relinquishment of the material, I had reference to the material at Spokane; this material here was not in question at any time. The reference was entirely to the material at Spokane.

**Testimony of Guy E. Kelley, for the Receiver.**

GUY E. KELLEY, being called by the receiver, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I am an attorney for the Receiver in this case. I remember the conversation I had with Mr. Fosseen, Mr. Davis and Mr. Haskell and other parties with reference to obtaining permission that the terra cotta be put into the Scandinavian-American Bank Building. There was no distinction made with reference to the terra cotta in Tacoma and the terra cotta [665] in Spokane, as to whether or not there had been a delivery. It was all discussed as one proposition; they were never divided. My letter of August 6 is based upon the same theory.



(Testimony of Guy E. Kelley.)

Cross-examination.

(By Mr. DAVIS.)

I told you we were not questioning at that time the priority of your lien. They told me that Mr. Holt was fighting your whole lien on the grounds there had been no delivery and you suggested Mr. Lund at Spokane had looked into the matter and claimed all material was shipped, constructed for a building as all of this material was, that it did not need to be completed, that lien was maintained just the same. I told you we had not looked into the matter. My personal opinion was that you did not have a lien but that generally there seemed to be an opinion among the attorneys that you did have a lien under certain circumstances. I admitted also at that time that I did not know the attitude of various of these other cross-complainants and did not know what attitude they would take with reference to the matter. You told me there was a serious question to be raised by Mr. Holt as to the validity of the lien. He is only one that I remember you mentioned.

Cross-examination.

(By Mr. LANGHORNE.)

With reference to the statement that there was some opinion among the other attorneys that there was a lien as to materials that were specially prepared for a building but not delivered, Mr. Davis said some other attorneys had been consulting on this same point. I think a man from Yakima and some attorney from Seattle had been consulted in the

(Testimony of Guy E. Kelley.)

matter. He did not refer to any other attorney in this case. Mr. Luman was one of the attorneys and he was one of those [666] present at the conference.

Whereupon it was stipulated by Mr. Oakley, attorney for the Receiver, and Mr. Lund for the Washington Brick, Lime & Sewer Pipe Co. that the following extract from the specifications should be put into the record:

“All terra cotta must be straight and even and made according to the details hereinafter approved by the architect; same to be made by terra cotta contractor. Models must be submitted to the architect for approval before starting work. No cracked pieces will be allowed to be placed in building; and all terra cotta must be of even color and straight; no bent pieces to be allowed.” [667]

**Testimony of P. C. Sullivan, for Washington  
Brick, Lime & Sewer Pipe Company.**

P. C. SULLIVAN, a witness sworn on behalf of the Washington Brick, Lime & Sewer Pipe Co., testified as follows:

Direct Examination.

(By Mr. DAVIS.)

I am an attorney practicing law in the city of Tacoma, admitted to practice in the United States District Court for the Western District of Washington; I have practiced in that court about thirty years I guess, ever since it was organized, and longer

(Testimony of P. C. Sullivan.)

than that in the courts of the state, five years more; my practice has been miscellaneous practice, all classes; I have handled litigation involving mortgage and bond foreclosures and mechanics' lien cases.

I have familiarized myself, in a general way, with the work in connection with the claim of the Washington Brick, Lime & Sewer Pipe Company in this case, which concerns the contract with the Scandinavian-American Building Company for the fabrication of terra cotta. In the event that the Company's claim for lien is sustained for the amount of material delivered here in Tacoma, approximately \$58,000.00, I should think a reasonable attorney's fee would be about \$5,800.00, or ten per cent of the amount of the recovery. If the amounts should go less than \$40,000.00, I think the attorneys ought to have \$4,000.00 as reasonable fees, providing the amount allowed is above \$20,000.00.

**Testimony of Scott Henderson, for Washington  
Brick, Lime & Sewer Pipe Company.**

SCOTT HENDERSON, a witness sworn on behalf of the Washington Brick, Lime & Sewer Pipe Co., testified as follows:

Direct Examination.

(By Mr. DAVIS.)

I am an attorney practicing law in the city of Tacoma, Washington, and practice in the Federal Court and in the State Court, have been practicing in the state of Washington ten years and I am fa-

(Testimony of Scott Henderson.)

miliar with the service necessary and the [668] compensation adequate for mortgage and lien foreclosures.

I am familiar, in a general way, with the legal service in connection with the Washington Brick, Lime & Sewer Pipe Company's claim in this case; I would say that \$6,500.00 would be a reasonable fee in that case, on the assumption that while the lien was filed for \$84,000.00 or \$85,000.00, the amount that is insisted upon now, of material delivered is \$58,000.00. I have looked into the work that was necessary and have considered this case as entirely different from the ordinary case of the filing and foreclosing of a lien, and taken into consideration the amount of work necessary to establish it and the hazards involved. [669]

### **Exhibit No. 136.**

#### **CONTRACT.**

THIS AGREEMENT, made this 28th day of February, A. D. 1920, by and between Scandinavian-American Building Company, a corporation, hereinafter called the "Owner," party of the first part, and Washington Brick, Lime and Sewer Pipe Company, a corporation organized and existing under the laws of the State of Washington, hereinafter called the "Contractor," party of the second part.

#### **WITNESSETH:**

WHEREAS, the said Scandinavian-American Building Company, Owner, is about to begin the erection of a sixteen-story building on the property

situated in Pierce County, Washington, described as follows: Lots Ten (10), Eleven (11) and Twelve (12) in Block One Thousand Three (1003), as shown and designated upon a certain plat entitled "Map of New Tacoma, W. T.," of record in the office of the Auditor of Pierce County, Washington, according to plans and specifications prepared by Frederick Webber, of Philadelphia, Penn., architect, and

WHEREAS, the said Washington Brick, Lime & Sewer Pipe Company is desirous of entering into a contract with the said Scandinavian-American Building Company, Owner, to furnish all the terra cotta above the dentil course over the back and two sides, being 11th and Pacific Avenue, the alley side to run to the granite base; the rear to run down to the wall of the adjoining building, according to estimate of February 19th, 1920, attached hereto; under and subject to all terms, limitations and conditions contained in the plans and specifications hereinbefore referred to.

NOW THIS AGREEMENT WITNESSETH,

ART. I. That in consideration of the agreements herein contained, the Owner agrees to pay to the Contractor, the sum of One Hundred Nine Thousand (\$109,000.00) in installments as hereinafter stated, Said payments, however, in no way lessening the total and final responsibility of the Contractor. No payment shall be construed or considered as an acceptance of any defective work or improper material.

Although it is distinctly understood and agreed by and between the parties hereto that this con-



tract is a whole contract, and not severable or divisible, yet for the convenience of the Contractor, it is stipulated that payments shall be made as follows:

75% monthly, to be paid in cash, of the estimated value of material delivered, and the balance of 25% to be paid within thirty (30) to sixty (60) days from the completion of this contract.

ART. II. The said Contractor hereby covenants, promises and agrees to do all of the aforesaid work to be furnished and finished agreeably to the satisfaction, approval and acceptance of the Architect of said building and to the satisfaction, approval and acceptance of the said Owner, according to the true intent and meaning of the drawings, plans [670] and specifications made by said Architect,

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which said plans, drawings and specifications are to be considered as part and parcel of this agreement, as fully as if they were at length herein set forth, and the said Contractor is to include and do all necessary work under his contract, not particularly specified, but required to be furnished and done in order to fully complete and fulfill his contract to the satisfaction of the said Architect and Owner aforesaid.

ART. III. The Contractor hereby agrees that time shall be considered the very essence of this contract and to complete all the obligations herein assumed, and to enter into the spirit of co-operation under which all the Contractors are working. And the said Contractor further covenants and agrees to perform the work promptly, without no-

tice on the part of anyone, so as to complete the building at the earliest possible moment.

ART. IV. The Contractor further covenants and agrees to observe carefully the progress of the work upon the entire building, without notice from anyone, and to procure drawings at least two weeks prior to executing the work, and to perform his portion of the work upon said building at the earliest proper time for such work, and to be responsible for all loss occasioned directly and indirectly by any lack of knowledge upon his part, as to the proper time to perform his work.

ART. V. The said Contractor shall complete the several portions and the whole of the work comprehended under this agreement by and at the time or times hereinafter stated, viz.:

Delivery of the aforementioned material to commence within four (4) months from the date of this contract, and to be completed within six (6) months.

Should the contractor be delayed in delivering his material, by the owner, certificates are to be given for payment for material completed at the factory.

ART V<sup>1</sup>/<sub>2</sub>. The Purchaser shall furnish to the Manufacturer such further drawings or explanations as either party may consider necessary to detail and illustrate the work to be made, and the manufacturer shall conform thereto as part of this contract so far as the same may be consistent with the original drawings and specifications hereinbefore referred to and with the technical possibilities of the material.

ART. VI. Should the Contractor be delayed in the progress of the work under this contract by strike, or common carrier, or casualty wholly beyond the control of the Contractor, then the time herein designated for the completion of said work shall be extended for a period equivalent to the time lost, but no such allowance shall be made unless a claim therefor is presented in writing by the Contractor within twenty-four hours of the occurrence of such delay. [671]

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ART. VII. And in case of default in any part of the said work within the time and periods above specified, the Contractr hereby promises and agrees to pay the Owner, and the Owner may deduct from any amount coming to the Contractor the sum of Fifty (\$50) Dollars for each and every day's delay until the completion of the work, not in the nature of a penalty, but in the nature of liquidated damages for the delay caused to the Owner in the completion of the work.

ART. VIII. Any imperfect workmanship or other faults which may appear within one year after the completion of said work, and in the judgment of said Architect arising out of improper materials or workmanship, shall upon the direction of said Architect, be amended and made good by, and at the expense of, said Contractor, and in case of default so to do, the Owner may recover from said Contractor the cost of making good the work.

ART. IX. The Contractor hereby agrees to remove the dirt and rubbish accumulating on the

premises, caused by the construction of his work, at such time or times as he may be instructed by the Owner or his representatives, and if not removed promptly by the Contractor, the Owner is hereby authorized to remove the same at the expense of the said Contractor, and to deduct the cost thereof from any balance that may be due and owing him.

ART. X. And should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or materials of the proper quality or fail in any respect to prosecute the work with promptness and diligence or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the Architect or the Owner, the latter shall be at liberty after two day's written notice to the Contractor to provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this Contract; and if the Architect or the Owner shall certify that such refusal, neglect or failure is sufficient ground for such action, the Owner shall also be at liberty to terminate the employment of the Contractor for the said work and to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all materials, tools and appliances thereon and to employ any other person or persons to finish the work and provide the materials therefor; and in case of such discontinuance of the employment of the Contractor, the latter shall not

be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the Owner in finishing the work said excess shall be paid by the Owner to the Contractor; but if said expenses shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expenses incurred by the Owner as herein provided, either for furnishing the materials or for finishing the work and any damages incurred through such default shall be itemized and certified by the Owner, which itemized statement shall be conclusive upon the Contractor. [672]

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ART. XI. And the Owner reserves the right, that if there be any omission or neglect on the part of the said Contractor of the requirements of this agreement and the drawings, plans and specification, the said Owner may, at its discretion, declare this contract, or any portion thereof, forfeited; which declaration and forfeiture shall exonerate, free, and discharge the said Owner from any and all obligations and liabilities arising under this contract, the same as if this agreement had never been made; and any amount due the Contractor by reason of work done or material furnished prior to the forfeiture of this contract, shall be retained by the said Owner until the full completion and acceptance of the building upon which said work has been done or said materials furnished, at which time



the said Owner, after deducting all costs and expenses occasioned by the default of the said Contractor, shall pay or cause to be paid to him the balance with a statement of all said costs and expenses.

ART. XII. And the Contractor further covenants, promises and agrees that he will make no charge for any extra work performed or materials furnished in and about his contract, and he hereby expressly waives all right to any such compensation, unless he shall first receive an order in writing for the same from the Owner.

ART. XIII. And the Contractor hereby assumes entire responsibility and liability in and for any damage to persons or property during the fulfillment of this contract, caused directly or indirectly by the Contractor, his agents or employees, and the Contractor agrees at his own expense to carry sufficient liability and workman's compensation insurance and to enter in and defend the Owner against, and save it harmless from loss or annoyance by reason of suits or claims of any kind on account of such alleged or actual damages; or on account of alleged or actual infringements of patents in regard to any method, device or apparatus, or any part thereof, put in, under, or in connection with this contract, or used in fulfilling the same.

The Contractor hereby further agrees not to assign or sublet in any manner whatsoever, any part or portion of this contract, without the written consent of the Owner, upon the express penalty of

forfeiture of the entire contract, in the discretion of the Owner.

ART. XV. And the Contractor shall at all times, when required by the Owner, before receiving any moneys under this contract, produce satisfactory vouchers and receipts from all employees and materialmen for work done and materials furnished in and about the erection and completion of the building covered by this contract.

ART. XVI. And any and all work that may be cut out and omitted from this contract, during the progress of the work, shall be allowed by the Contractor at the regular contract price, and shall be adjusted and agreed upon by said parties before the final settlement of their accounts. [673]

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ART. XVII. The Owner shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said work, or any part thereof, or to any of the materials or other things done, furnished and supplied by the Contractor, used and employed in finishing and completing the same.

ART. XVIII. It is hereby further mutually covenanted, promised and agreed, by and between the said parties, that in the event of any dispute or disagreement hereafter arising between them as to the character, style or portion of the work on said buildings to be done, or materials to be furnished under this contract, or the plans and specifications hereinbefore referred to, or any other matter in connection therewith, the same shall be referred to

three arbitrators, one to be chosen by each of the parties hereto, and the third by the two arbitrators so selected, whose decision, or that of the majority of them in the matter, shall be final and binding upon them.

ART. XIX. The Contractor shall, upon request from the Owner, furnish forthwith a bond or bonds in form and substance and with surety satisfactory to the Owner, in the sum of Fifty-four Thousand (\$54,000.00) Dollars conditioned for the true and faithful performance of this contract on the part of the Contractor. The Bond, however, to be paid for by Owner.

ART. XX. All negotiations and agreements, oral or written, prior to this agreement, are merged herein and there are no understandings or agreements, verbal, written or otherwise, between the said parties except as herein set forth. This agreement cannot be changed, altered or modified in any respect except by the mutual consent of the parties endorsed hereon in writing and duly executed.

The Contractor has read and fully understands this agreement and the said Contractor hereby certifies that before the execution of this agreement he examined all the plans and specifications prepared in connection with the contract.

And it is further agreed that the covenants, promises and agreements herein contained shall be binding upon and final upon the heirs, executors, administrators and successors of the parties hereto.

IN WITNESS WHEREOF, the said parties

have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of  
SCANDINAVIAN-AMERICAN BUILD-  
ING COMPANY.

[Seal]

By CHARLES DRURY,

Its President.

J. SHELDON,

Its Secretary.

WASHINGTON BRICK, LIME & SEWER  
PIPE COMPANY,

Contractor.

By V. E. PIOLLET,

Vice-president.

CHARLES P. LUND,

Secretary. [674] <sup>1/3</sup>